

Supplementary Conditions

SUPPLEMENTARY CONDITIONS

INTRODUCTORY STATEMENT

Supplementary Conditions: These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1990 Ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in force and effect.

NOTES TO READER

1. Insofar as format and arrangement of the material is concerned, these Supplementary Conditions follow the concepts of the "Guide to the Preparation of Supplementary Conditions," (Document EJCDC No. 1910-17, 1990 Ed.) prepared by the Engineer's Joint Contract Documents Committee.
2. Supplementary Conditions are arranged in the same order as the paragraphs in the General Conditions, and the paragraphs herein bear comparable numbers to those of the General Conditions, but with the prefix "SC." For brevity, paragraph numbers of the General Conditions when appropriate, are referred to herein with the prefix "GC."
3. The terms used in the Supplementary Conditions which are defined in the General Conditions of the construction contract (No. 1910-8, 1990 Ed.) have the same meanings assigned to them in the General Conditions.
4. Administrative procedures which accompany certain subjects covered under the General Conditions and Supplementary Conditions appear in Division 1 of the Specifications. This would apply, for example, to Change Orders and Shop Drawing Submittals.

ARTICLE 1-DEFINITIONS

- A. Modify the existing definitions as follows:

SC-1.3 Application for payment: Replace the phrase "accepted by the ENGINEER" in paragraph 1.3 of the General Conditions with the phrase "provided by the ENGINEER.)"

- B. Supplement existing definitions as follows:

SC-1.35 Add the following in the end of General Condition 1.35:

"Shop Drawings include the following:

1. Preprinted material such as illustrations, standard schedules, performance charts, instructions, brochures, diagrams, manufacturer's descriptive literature, catalog data and other data to illustrate a portion of the Work, but not prepared exclusively for this Contract.

2. Drawings, schedules, diagrams and other data prepared specifically for this Contract, by the Contractor or through the Contractor by way of a subcontractor, manufacturer, supplier, distributor or other lower tier contractor, to illustrate a portion of the Work.”

SC-1.37 Subcontractor: Delete the phrase, ”at the site” from the entire paragraph.

C. Add the following definitions:

SC-1.46 Bid Item Description – A separate description of each Bid item

SC-1.47 Work terminology: the following definitions are intended to supplement paragraph 1.43 of the General Conditions:

1. Furnish or Supply: To supply, deliver, and unload materials and equipment at the project site and inspect for damage.
2. Install: To unpack, place, assemble, erect, apply, finish, cure, protect, and clean furnished materials and equipment in secured position ready for the intended use.
3. Provide: To furnish or supply, and install.
4. Products: New material, machinery or components, equipment, fixtures, and systems forming the Work. It does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components, if specifically identified for reuse in the Contract Documents.

SC-1.48 Site: The lands upon which work is to be performed. The limits of such lands may be indicated elsewhere in the Contract Documents.

SC-1.49 “As-Shown”: Whenever, in the description of any part of the Work, the expression AS SHOWN, SHOWN ON THE PLANS, or similar expressions are used, it shall be understood in to mean as shown on the Contract Drawings, unless another meaning is plainly indicated.

SC-1.50 Nation – The Seneca Nation of Indians, a federally recognized Indian Tribe.

SC-1.51 THPO – The Seneca Nation of Indians Tribal Historic Preservation Officer

Policies and Procedures, attached hereto as Exhibit GC-A.

SC-1.52 TERO – The Seneca Nation of Indians Tribal Employment Rights Ordinance, attached hereto as Exhibit GC-B.

ARTICLE 3 - PRELIMINARY MATTERS

Copies of Documents

SC-2.2 Delete paragraph 2.2 of the general Conditions in its entirety and insert the following in its place: “OWNER will furnish copies of the Contract Documents to CONTRACTOR as follows:

Three sets each of full-size drawings and project manual with attachments.

Additional copies of Contract Documents or a copy of reproducible documents may be purchased at ENGINEER’S normal rates for reproduction.

The copies of Contract Documents furnished to CONTRACTOR after signing of Agreement will be revise by ENGINEER to incorporate the requirements of any issued Addenda throughout the drawings and the project manual, rather than issuing copies of the Addenda as separate instructions. The incorporation of Addenda will be done solely to improve efficiency of the construction process and will have no effect on the requirements of the Contract. In the event of a disagreement between the documents distributed after signing of the Agreement (which have the Addenda incorporated throughout the documents) and the documents forming the original signed Agreement (which will be identical to those distributed during bidding), the documents forming the original signed Agreement shall take precedence. Refer to Supplementary Condition 2.5 regarding Contractor’s responsibility to verify that the addenda have been accurately incorporated in the documents prior to using those documents.’

Commencement of Contract Time; Notice to Proceed

SC-2.3 Amend the last sentence of paragraph 2.3 of the general Conditions by striking the phrase “later than the sixtieth day” and adding the phrase “later than the seventy-fifth day”; and as so amended, paragraph 2.3 remains in effect.

Before Starting Construction

SC-2.5 Add the following sentence at the end of the paragraph: “CONTRACTOR’s study and checking of the Contract Documents shall include his/her independent verification that the addenda have been accurately and completely incorporated into the Contract Documents prior to relying on those documents. Accordingly, Contractor assumes the full risk of working from addenda-incorporated documents.”

SC-2.61 Delete paragraph 2.6.1 of the General Conditions in its entirety and insert the following

In its place:

“a preliminary progress schedule indicating the times (dates) for starting and completing the various stages of the Work. Schedule shall include and Milestones specified in the Contract Documents, shall consider timer required for submission and approval of the shop drawings and sample submittals and for manufacturing lead times and product delivery dates, and shall contain at least the level of detail and other characteristics as identified in the Contract Documents.”

SC-2.6.2 Add the following to the end of paragraph 2.6.2 of the General Conditions:

“Schedule shall allow a minimum of ten working days for ENGINEER’s review after receipt of each submittal and resubmittal (excluding time for transmittal). In preparing schedule, CONTRACTOR shall discuss individual submittal requirements with the ENGINEER and shall increase the minimum time allowance for review of complex or voluminous submittals.”

SC-2.7 Amend the first sentence of paragraph 2.7 of the General Conditions by striking out the following words “Before any work at the site is started . . .,” and adding the words “Before the Effective Date of the Agreement,” and as so amended, paragraph 2.7 remains in effect.

Preconstruction Conference

SC-2.8 Amend the first sentence of paragraph 2.8 of the General Conditions by striking out the following words “attended by CONTRACTOR, ENGINEER and others as appropriate,” and adding the following sentence at the end of paragraph 2.8 of the General Conditions: “Present at the conference will be OWNER or his representative, ENGINEER, Resident Project Representative, CONTRACTOR and his Superintendent, and other invited parties or government representatives having jurisdiction over or official interest in the project and others as appropriate.”

Initially Acceptable Schedules

SC-2.9 Change the fourth sentence to read:

“The progress schedule will be acceptable to ENGINEER if it contains at least the specified level of work detail and characteristics and provides for an orderly progression of the Work to completion within any specified milestones and Contract times. Such acceptances will not impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work not interfere with or relieve CONTRACTOR from CONTRACTOR’s full responsibility therefor.”

ARTICLE 3-CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.3.1 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appears in paragraph 3.3.1.

ARTICLE 4-AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERNCE POINTS

4.2 Subsurface and Physical Conditions

SC-4.2 No reports or drawings were utilized by ENGINEER in preparation of Drawings and Specifications.

4.5 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material.

Add the following sub-paragraph after SC-4.5.1.

“SC-4.5.1 OWNER is unaware if the existence if any PCBs, petroleum, hazardous waste or radioactive material within the Scope of Work at the site.”

SC 4.5.4 Delete paragraph 4.5.4 of the General Conditions in its entirety.

ARTICLE 5 – BONDS AND INSURANCE

Performance, Payment and other Bonds

SC-5.1 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appears in paragraph 5.1.

Add the following language at the end of paragraph 5.1 of the General Conditions:

“CONTRACTOR and surety shall jointly complete and execute the Performance and Payment Bond forms included at the end of the Agreement.”

CONTRACTOR’s Liability Insurance

SC-5.4 The limits of the liability for the insurance required by paragraph 5.4 of the General Conditions shall provide for coverages for not less than the following amounts or greater where required by applicable Laws and Regulations:

5.4.1 and 5.4.2 Worker’s Compensation, etc., under paragraphs 5.4.1 and 5.4.2 of the General Conditions, in accordance with the statutory requirements of the jurisdiction in which the services are to be performed; and Employer’s Liability Insurance with limits not less than \$1,000,000 each accident or death of an employee engaged in the Work hereunder.

5.4.3, 5.4.4 and 5.4.5 CONTRACTOR’s Liability Insurance under paragraphs 5.4.3 through 5.4.5 of the General Conditions which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of the CONTRACTOR:

(1)	General Aggregate (except Products-Completed Operations):	\$1,000,000
(2)	Products-Completed Operations Aggregate:	\$1,000,000
(3)	Personal and Advertising Injury (Per Person/Organization)	\$1,000,000
(4)	Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
(5)	Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable	
(6)	Excess Liability:	
	General Aggregate	\$1,000,000
	Each Occurrence	\$1,000,000

5.4.6 Including:

Automobile Liability:

- (1) Bodily Injury: \$500,000 per person; \$1,000,000 Each Accident
 - Property Damage: \$1,000,000 Each Accident
 - OR
 - (2) Combined Single Limit (Bodily Injury & Property Damage):
- \$1,000,000

SC-5.4.7 OWNER, ENGINEER shall be listed as additional insureds. The policies shall be endorsed to provide that the coverage to the additional insureds is primary and non-contributory.

SC-5.4.10 The Contractual Liability coverage required by paragraph 5.5.10 of the General Conditions shall provide coverage for not less than the following amounts:

- | | |
|---|-------------|
| (1) General Aggregate | \$1,000,000 |
| (2) Each Occurrence (Bodily Injury and Property Damage) | \$1,000,000 |

SC-5.4.11 The provisions or endorsements necessary to comply with paragraphs 5.4.11 of the General Conditions shall include the obligation to notify the OWNER and ENGINEER when an aggregate limit of liability required or certified has been reduced by the payment of claim(s). ENGINEER shall also be notified 30 days in advance of any cancellation in coverage.

5.6 Property Insurance

Delete the first sentence of paragraph 5.6 of the General Conditions and replace with the following:

“OWNER shall purchase and maintain or cause to be purchased and maintained property insurance upon the Work and the Property to the full insurable value thereof from a company or companies authorized to do business in the jurisdiction in which the Property is located.

SC-5.7 Insert the word “applicable” in front of the terms ‘Laws and Regulations’ as the same appears in paragraph 5.7.

SC-5.11.2 Delete paragraph 5.11.2 of the General Conditions in its entirety.

ARTICLE 6-CONTRACTOR’S RESPONSIBILITIES

6.3 Payment of Minimum Wage Rates

Add the following subparagraph to paragraph 6.3 of the General Conditions:

‘SC-6.3.1 The CONTRACTOR and every subcontractor shall pay employees no less than the wage rates published for each trade or occupation listed in the Davis-Bacon Prevailing Wage Rate Schedule, available at <http://www.wdol.gov/Index.aspx> as the same may be supplemented, changed or amended. In no case shall CONTRACTOR be entitled to any additional compensation or extras because of any supplement, change, redetermination or amendment of the Davis-Bacon Prevailing Wage Rate Schedule.

Progress Schedule

SC-6.6.1 Delete paragraph 6.6.1 of the General Conditions in its entirety and insert the following in its place:

“CONTRACTOR shall submit to ENGINEER for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments shall conform generally to the progress schedule then in effect and additionally shall comply with any provisions of the General Requirements applicable thereto. ENGINEER’s acceptance will not impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR’s full responsibility therefor. ENGINEER’s review to determine acceptability will be limited to future activities only. By accepting the revised schedule, ENGINEER does not indicate acceptance of any historic information shown thereon.”

6.7 Substitutes and “Or Equal” Items.

SC-6.7.1.2 Substitute Items: Add the following language at the end of paragraph 6.7.1.2 of the General Conditions:

“If the substitute item requires no modifications to the structures, piping, layouts, etc., detailed on the drawings, the application shall also include details of proposed modifications necessary to accommodate the substituted item. Such details shall include scaled layouts, dimensions and other pertinent information to enable the ENGINEER to accurately assess the entire application. If the substitute item and proposed modifications are approved, the CONTRACTOR, at no additional cost to the OWNER, shall do all work necessary to make such modifications and absorb all costs of any related changes imposed on other CONTRACTORS. Final details of such modifications shall be prepared and submitted by the CONTRACTOR for approval under the Shop Drawing requirements specified elsewhere.”

SC-6.7.1.3 CONTRACTOR’s Expense: Add the following language at the end if subparagraph 6.7.1.3 of the General Conditions:

“In order to aid ENGINEER in determining the equality of a proposed “or equal” or substitute item (when compared to the item actually specified), the CONTRACTOR shall arrange for the performance of any tests requested by the ENGINEER. ENGINEER shall determine the nature, extent, tester and degree of supervision of such tests. Certified test results shall be mailed directly to the ENGINEER for all tests requested. All costs of such tests, including engineering costs, shall be borne by the CONTRACTOR.”

6.8 Concerning Subcontractors, Suppliers and Others:

SC-6.8.1 Add the following language to the end of paragraph 6.8.1 of the General Conditions:

“Rejection by OWNER or ENGINEER of a proposed supplier or manufacturer of a particular item of material or equipment other than the suppliers(s) or manufacturer(s) named in the Specification for the item does not constitute grounds for “reasonable objection” by CONTRACTOR or for any adjustment in his Contract Price or time of completion; such proposal constitutes a substitution and must be processed in accordance with the procedures and requirements of Paragraph(s) 6.7 of the General Conditions and Supplementary Conditions.”

SC-6.8.2 Add the following language to the end of paragraph 6.8.2 of the General Conditions:

“However, no increase in Contract Price will be allowed to cover a substitute if acceptance is revoked by ENGINEER or OWNER:

- a. Of a supplier, person or organization who cannot meet the specifications covering the item of material or equipment which he is to furnish, or

- b. Of a subcontractor identified on CONTRACTOR's list who cannot perform the work designated by such listing for legal reasons including but not limited to the fact the subcontractor is unlicensed to perform that particular aspect of work or is blacklisted because of labor violations."

SC-6.9.1 Insert the word "applicable" in front of the term "Laws and Regulations" as the same appears in paragraph 6.9.1.

6.13 Permits

SC-6.13 Add the following sentence to paragraph 6.13 of the General Conditions

"When construction permits are accompanied by regulations or requirements issued by a particular authority or agency, it shall be the CONTRACTOR's responsibility to familiarize himself and comply with such regulations or requirements as they apply to his operations on the project."

6.14 Laws and Regulations

SC-6.14.2 Insert the word "applicable" in front of the term "Laws and Regulations" as the same appears in paragraph 6.14.2.

Taxes

Add the following subparagraph to GC-6.15

SC-6.15.1 "The OWNER is exempt from payment of Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials, equipment and supplies to be sold to the OWNER pursuant to this Contract. Also exempt from such taxes are purchases by the CONTRACTOR and his subcontractors of materials, equipment and supplies to be sold to the OWNER pursuant to his Contract, including tangible personal property to be incorporated in any building, structure or other real property forming part of this project."

Use of Premises

SC-6.16 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appears in paragraph 6.16.

Add SC-6.18.1 as follows:

CONTRACTOR recognizes that OWNER adheres to the Seneca Nation of Indians Tribal Historic Preservation Officer Policies and Procedures (THPO), a copy of which is attached hereto as exhibit GC-A. CONTRACTOR recognizes that the Nation’s THPO will be incorporated in all contracts pertaining to the construction of the Project. CONTRACTOR, including its Subcontractors and Suppliers, will be required to comply with the requirements of the THPO, including the strict adherence to THPO protocol in the event of a discovery human remains and associated funerary objects.

6.19 Record Documents

SC-6.19 Delete the last sentence of General Conditions 6.19 and replace with the following:

“Prior to CONTRACTOR notifying ENGINEER that the entire work is substantially complete, CONTRACTOR shall deliver to ENGINEER for OWNER one copy of current record documents and required operation and maintenance data relating to the portion of the project being utilized. CONTRACTOR shall submit said documents prior to OWNER accepting the portion of the project to be used as substantially complete.”

6.20 Safety and Protection

SC-6.20 Add the following language to the end of General Condition GC-6.20:

“Site Safety Responsibilities and Roles.

It is the objective of the OWNER that the CONTRACTOR maintain all construction worksites in a safe, neat and orderly condition, and free from human hazard. It is the policy of the OWNER that if an unsafe condition is encountered, the affected activity shall be suspended until the unsafe condition is corrected.

As clearly stated in the Contract Documents, the CONTRACTOR has the sole responsibility for ensuring that the construction worksite is safe, neat and maintained in an orderly condition, and is free from human hazard. The CONTRACTOR is also solely responsible by law for compliance, and regulatory reporting requirements, for all workplace and employee safety issues.

The CONTRACTOR’s designated On Site Safety Representative will be the sole point-of-contact for all safety issues and shall have the authority to stop the work and implement corrective procedures.

The CONTRACTOR is required to have a Project Safety Plan. The Project Safety Plan shall outline the CONTRACTOR’s actions that will ensure that the project site is maintained in a safe, neat and orderly condition, and is free from human hazard. The Project Safety plan shall also contain written procedures for the CONTRACTOR’s compliance with government safety laws and associated reporting requirements.

At a minimum, the Project Safety Plan should include the following:

- Project Safety Objective Statement
- Safety Responsibilities and Roles within Contractor’s Organization
- The Contractor Safety Policy Requirements for Subcontractors
- Mandatory Guidelines for the use of Personal Protective Equipment
- Emergency Response Procedures including routes to nearest hospitals
- Procedures for reporting accidents
- Site security procedures
- Procedures for Government Agency Compliance Reporting
- Procedures for the Protection of the general public
- Procedures for the protection of project site visitors
- Safety procedures related to the maintenance and protection of traffic
- Hazard communication program
- Confined space program
- Lockout and ground fault protection procedures
- Identification of the proposed Site Safety Representative and Competent Person, including credentials.
- Hazard analysis for all major work items
- Rigging and crane safety procedures
- Statement acknowledging that the Contractor is solely responsible for construction worksite safety issues.

Emergencies

SC-6.23 Add the following language at the end of paragraph 6.23 of the General Conditions

“CONTRACTOR shall designate one person to respond to emergencies and act on the CONTRACTOR’s behalf during off-work hours at the project site. The person’s name, address, 24 hour telephone number, shall be provided to the POWNER during the preconstruction conference and the designated person shall be on call during off-work hours. Response time shall not exceed one hour after notification is given by OWNER or ENGINEER that an emergency exists at the project site.”

Submittal Procedures:

Paragraph 6.25.2 of the General Conditions is deleted and replaced with the following:

SC-6.25.2 Each submittal shall be stamped with the following certification statement, signed and dated by the Contractor’s designated representative:

“Certification Statement: By this submittal, I hereby represent that I have determined and verified all field measurements, field construction criteria, materials, dimensions, catalog numbers and similar data and I have checked and coordinated each item with other applicable approved shop drawings and all contract requirements.’

Shop Drawing Review:

Add the following subparagraph to GC-6.26:

SC-6.26.1 The terms appearing on ENGINEER’s Shop Drawing Review Stamp denote results of ENGINEER’s review of CONTRACTOR’s submitted data have the following meanings, including procedures for disposition of the various copies of such data:

- a. “Approved” if no change or rejection is made.
- b. “Approved as Noted” if minor changes or additions are made, but resubmittal is not considered necessary.
- c. “Revise and Resubmit” if changes requested are extensive. In this case, resubmittal after correction is necessary and the same number of copies shall be included in the resubmittal as the first submittal.
- d. “Rejected” if it is considered that the data submitted cannot with reasonable revision meet the requirements of the Plans and Specifications.
- e. “Submit Specified Item” if the data submitted is not clear, complete, or for other reasons cannot be examined by the ENGINEER to establish compliance with the Plans and Specifications.

Add the following language to paragraph 6.28 of General Conditions:

If such related Work is unacceptable to ENGINEER, or is incompatible with or does not conform to the requirements of the subsequently reviewed Shop Drawings, CONTRACTOR shall correct or replace such Work at his own expense as well as the Work of other contractors whose work is affected in any way.

CONTRACTOR’S General Warranty and Guarantee

Add SC-6.30.3 as follows:

“CONTRACTOR acknowledges the sovereignty of the Seneca Nation of Indians (the “Nation”) separate and apart from the United States and state and local governments. CONTRACTOR shall not communicate in any way, directly or indirectly, with any federal, state or local government or other instrumentality relating to any matter related to the Contract Documents or the Work, except to the extent it has received the prior written authorization of the OWNER. This prohibition is intended to and shall extend to all those acting through or under CONTRACTOR, including but not limited to any Subcontractors or Suppliers. Notwithstanding any other provision of this Agreement, any failure to comply with this Section 6.30.3 shall constitute a default of this Agreement by CONTRACTOR and OWNER shall have the right to terminate this Agreement under paragraph 15.2 and pursue any and all other rights available at law or in equity.”

Indemnification

SC-6.31 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appear in the first sentence of paragraph 6.31.

ARTICLE 7 – OTHER WORK

Related Work at Site:

SC-7.1 Add the following subparagraph to 7.1 of the General Condition:

“SC-7.1.1 OWNER does not anticipate letting other direct contracts for the project.

SC-7.1.2 OWNER does not anticipating performing any work on the project with his
Own forces.”

Coordination:

SC-7.4 Add the following language to General Condition 7.4:

“OWNER does not anticipate letting other direct contracts for the project.”

Article 9 – ENGINEER’S STATUS DURING CONSTRUCTION

Decisions on Disputes:

Amend paragraph 9.11 of the General Conditions as follows:

Change the phrase in brackets, which appears in the thirteenth line to read: “(but in no event later than ten days).”

Change the sixteenth line to read: “within forty-five days after the start of such occurrence or event.”

Strike the sentence beginning with “ENGINEER’S written decision on such claim, dispute or other matter will be final....” And replace with the following language:

“ENGINEER’S written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR but subject to mediation as provided in Article 16. Either party may file for mediation of the ENGINEER’S written decision is issued. Either party may, within 30 days from the date of an ENGINEER’S decision is issued, demand in writing that the other party file for mediation within 60 days of the ENGINEER’S decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate with respect to the ENGINEER’S decision.”

SC-9.12 Insert the word “applicable” in front of the term ‘Laws and Regulations’ as the same appears in the last sentence of 9.12.

ARTICLE 10 – CHANGES IN THE WORK

No changes to the General Conditions

ARTICLE 11 – CHANGE OF CONTRACT PRICE

SC-11.2 Notice of Claim and Supporting Data

Amend paragraph 11.2 of the General Conditions, as follows:

Change the phrase in brackets, which begins on the fifth line, to read: “(but in no event later than ten days).”

Change the first part of the third sentence, which begins on the seventh line, to read: “Notice of the amount of the claim with supporting data shall be delivered within forty-five days after the start of the occurrence...etc.”

SC-11.3 through SC-11.7 Cost of Work and CONTRACTOR’S Fee

Delete all paragraphs 11.3 through 11.7 of the General Conditions and substitute in their place the following:

11.3 The value of any work covered by a Change Order or any claim for an increase or decrease in the Contract Price shall be determined by one of the following method:

1. By such applicable unit prices, if any, are set forth in the Contract; or
2. If no such unit prices are set forth, then by unit prices or by lump sum mutually agreed

Upon by the OWNER and the CONTRACTOR; such unit or lump sum being arrived at

By estimates of reasonable value prepared in general conformance outline set forth in

Paragraph 3 below or

3. Where there are no applicable unit prices and agreed lump sum prices cannot be readily Established or substantiated, the CONTRACTOR shall be paid the actual and reasonable cost of:
 - a. Necessary materials (including transportation to the site). Material used, if acquired by direct purchase, must be covered by receipted bills or acceptable invoices. All prices on used material incorporated in either temporary or permanent work shall be billed at the fair value, less the original cost when new. A reasonable salvage credit shall be given for all salvageable material recovered. Salvage value of substantial material recovered must be determined jointly by the CONTRACTOR and the ENGINEER'S; plus
 - b. Necessary direct labor charges. Each class of labor shall be billed separately at actual payroll rates. Average rates based on different classes of labor, will not be accepted; plus
 - c. Payments required to be made to labor organizations under existing labor agreements; plus
 - d. Equipment and plant rentals, other than small tools; plus
 - e. Compensation for profit and overhead as prescribed in paragraph 11.4

In calculating the cost of equipment and plant rentals, the base hourly rates shall be the daily rate as listed in the current Rental Rates for Construction Equipment prepared by the Associated Equipment Distributors divided by eight (8); Thereafter

The first 20 hours will be paid at 90% of the above base hourly rate; for 21 to 40 hours, the rate will be 80% of the above base hourly rate; and

For over 40 hours, the rate will be 45% of the above base hourly rate.

The number of hours to be paid for shall be the number of hours that the equipment or plant is actually used in performing the work of the Change Order.

Equipment to be used by the CONTRACTOR shall be specifically described and be of suitable size and suitable capacity required for the work to be performed. In the event the

CONTRACTOR elects to use equipment of a higher rental value than that suitable for the work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment paid for will be recorded as part of the record for the work performed. The ENGINEER will determine the suitability of the equipment. If there is a differential in the rate of pay of the operator of oversized or higher rate equipment, the rate paid for the operator of the oversized or higher rate equipment, the rate paid for the operator will likewise be that of the suitable equipment.

In the event that a rate is not established in the Associated Equipment Distributors Rental Rates for a particular piece of equipment or plant, the OWNER shall establish a rate for that piece of equipment or plant that is consistent with its cost and use.

It is mutually understood that the base daily rate include all costs incidental to the equipment and plant rentals including cost of moving to and from site.

11.4 If methods 2 or 3 are used, the CONTRACTOR may add twenty % (20%) to the total

Cost of material, equipment, plant rentals and direct labor, as his only compensation for profit and overhead, except that the 20% shall not be applied to the premium portion of overtime pay.

If any of the work is performed by a subcontractor, the CONTRACTOR shall be paid the actual and reasonable cost of such subcontracted work computed as outlined above or on such other basis as might be approved by the OWNER, plus an additional allowance of five% (5%) to materials and direct labor to cover the CONTRACTOR'S profit, superintendence, administration, insurance, and other overhead. The cost of the premium portion of overtime pay shall be excluded when computing the above described charges for profit and overhead.

11.5 Overhead may be defined to include the following items:

1. Premium on bond;
2. Premium on insurance required by the State, Workmen's Compensation Insurance, public liability and property damage insurance, unemployment insurance, Federal old age benefits, other payroll taxes and such reasonable charges that are paid by the CONTRACTOR pursuant to written agreement with an employee;
3. All salary and expenses of executive officers, supervising or supervising Employees;
4. All clerical or stenographic employees;
5. All charges for minor equipment, such as hand tools, small hand held power tools, Including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, Wrenches, etc. and other miscellaneous supplies and services including ladders, Scaffolds, safety equipment, reusable forms, administrative or personal vehicles or Equipment; and

6. All drafting room accessories such as paper, tracing cloth, blue printing, etc.

11.6 Regardless of the method of payment (1, 2, or 3), the CONTRACTOR will be required to submit evidence satisfactory to the OWNER to substantiate each and every item that constitutes his proposal of the value of the change.

The OWNER will determine by which of the methods, 1, 2, or 3, the value of the change shall be computed.

The provisions hereof shall not affect the power of the CONTRACTOR to act in case of emergency as provided elsewhere in the General Conditions.

11.7 In computing the value of a Change Order (under methods 2 or 3), which involves additions and deductions of work:

1. If the cost of the added work exceeds the cost of the omitted work, CONTRACTOR'S overhead and profit shall be computed on the amount by which the added work exceeds the omitted work.
2. If the cost of the omitted work exceeds the cost of the added work, the CONTRACTOR will be allowed to retain the overhead and profit on the amount by which the omitted work exceeds the added work.

SC-11.9.2 Unit Price Item Description

Add the following language to paragraph 11.9.2 of the General Conditions

"Each Unit Price Item has a Unit Price Bid Item Description Page which lists the work included under that item and certain other parameters, the details of which appear in the General Requirements if Unit Price work is utilized on the project. Discrepancies or omissions in the Unit Price Item Descriptions shall not be construed as relieving the CONTRACTOR of the responsibility of performing the entire work included in his Contract as shown on the Contract Drawings and described in the Specifications at the bid unit prices, without increases. If it is found that some aspect of the work required under this Contract was not listed in any of the Unit Price Item Descriptions, the ENGINEER shall determine under which of the existing unit price items the work shall be paid."

ARTICLE 12-CHANGE OF CONTRACT TIMES

SC-12.1 Notice of Claim and Supporting Data

Amend paragraph 12.1 of the General Conditions, as follows: Replace the crossed out phrase in the parenthesis, which begins on the fifth line with: "(but in no event later than ten days)."

Change the first part of the third sentence, which begins on the ninth line, to read: "Notice of the extent of the claim with supporting data shall be delivered within forty-five days after such occurrence...etc"

Delete paragraph 12.3 in its entirety and replace with the following:

Where CONTRACTOR is prevented from completing any part of the work within the Contract Times (or Milestones) due to delay beyond the control of the CONTRACTOR or CONTRACTOR'S subcontractors and/or

suppliers, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefore as provided in paragraph 12.1 Delays beyond the control of the Contractor, its Subcontractors and its Suppliers shall include, but may not be limited to, acts or neglect of utility workers or other contractors performing other work not under the supervision of CONTRACTOR as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions that CONTRACTOR could not foresee or defend against or acts of God. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of the CONTRACTOR.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF

DEFECTIVE WORK

Access to Work

SC-13.2 Add the OWNER’S CONSULTANT as a party who will have access to the work.

Tests and Inspections

SC-13.5 Add the following language to paragraph 13.5 of the General Conditions:

“ Inspectors and testing laboratories shall be acceptable to ENGINEER, and CONTRACTOR shall submit evidence of their qualifications to ENGINEER prior to any inspections or tests, if requested by ENGINEER,”

Correction Period

SC-13.12.2 Add the following phrase to the last sentence of the subparagraph 13.12.2 of the General Conditions:

“or if set forth in the Partial Certificate of Substantial Completion issued under paragraphs SC-14.10.”

SC-13.12.3 Add the following language to subparagraph 13.12.3 of the General Conditions:

A new one year correction period shall commence to run on the date when CONTRACTOR replaces “defective” work with “non-defective” work, but such guarantee shall apply only to the actual components of the work newly installed as a result of the corrective action.

All related components of the work not showing defect shall be exempt from the additional guarantee, except that the original guarantee on a related component shall be extended for a period of time corresponding to the period of non use of such component if it cannot be used or placed in service due to the condition of the original “defective” work, and/or for the time period that such component is taken out of service in order to replace the “defective” work.

ARTICLE 14 – PAYMENT TO CONTRACTOR AND COMPLETION

SC-14.2 Application for Progress Payment

Add the following paragraphs to paragraph 14.2 of the General Conditions:

“Subject to the OWNERS approval, ENGINEER will establish a uniform cut-off date for each month to determine the dollar value of the completed work and the amount of payment to CONTRACTOR covering his operations during the preceding period”

“CONTRACTOR may request payment for delivered materials and equipment if he can demonstrate to OWNER’S satisfaction that such item(s) are those required for incorporation in the work and that the following submittals are valid and in proper order:

1. If the materials or equipment are delivered on or off the site, this application for payment shall be accompanied by the following:
 - a. Invoice or Bill of Sale from supplier or manufacturer showing destination, inventory or description, and dollar value of item(s) delivered.
 - b. Packing slip showing date of delivery and carrying a notation by ENGINEER, Resident Project Representative, or OWNER’S REPRESENTATIVE to the effect that the item(s) is in satisfactory condition and has been satisfactorily stored. Such notation shall not be construed as final acceptance of the item(s).
 - c. Proof of property damage insurance coverage in the amount of 100 percent of the value of the stored item(s). As a minimum, the certificate shall name not only the CONTRACTOR, but also the OWNER (as Additional Named Insured) to provide fire, extended coverage, vandalism and malicious mischief insurance for the stored items(s).

2. If the materials or equipment are delivered to an off-site warehouse, which must be located Within a reasonable distance of the site, the following additional data must accompany the application:
 - a. In lieu of the packing slip (above), a copy of the shipping receipt from the warehouse indicating that the item(s) was delivered and stored at the warehouse, including date of delivery and inventory listing thereof. The receipt shall carry a notation by ENGINEER, Resident Project Representative, [or OWNER’S Representative] to the effect that the item(s) is in satisfactory condition and has been satisfactorily stored. Such notation shall not be construed as final acceptance of the item(s).
 - b. Copy of letter from CONTRACTOR to the warehouse directing that the stored item(s) not be released except upon authorization of both CONTRACTOR, ENGINEER, Resident Project Representative, or OWNER’S Representative.
 - c. Letter from CONTRACTORS surety company to ENGINEER consenting to payment for the stored item(s) in accordance with the Contract Documents. This letter must identify the item(s) for which consent is given.

3. The amount requested for payment of stored materials or equipment shall not include any of the CONTRACTORS overhead, profit, or any other unrelated costs, and shall not exceed the price indicated for the item in the Schedule of Values submitted by the CONTRACTOR.”

Review of Application for Progress Payment

SC-14.7 Add the following language in front of the first sentence of General Conditions paragraph 14.7:

“ENGINEER will refuse to recommend any payment, regardless of amount otherwise due, unless any updated progress schedule required by the Contract Documents has been submitted by CONTRACTOR and found acceptable to ENGINEER”

Add the following language to the subparagraph 14.7 of the General Conditions, as follows:

SC-14.7.4 Add the following language to the end of subparagraph 14.7.4: “or contractor has failed to submit certifications, affidavits, schedules, or other written information when as required in the Contract Documents, or CONTRACTOR has failed to submit shop drawings in accordance with the shop drawing schedule”

Add the following new subparagraph immediately after subparagraph 14.7.8 of the General Conditions:

“SC-14.7.9 Liability for liquidated or other damages contained or referenced herein has been incurred by the CONTRACTOR”

Substantial Completion

SC-14.8 Delete the first sentence of General Condition 14.8 and replace with the following

“When CONTRACTOR considers the entire Work ready for its intended use, and after completion of required instruction of OWNER’S personnel in proper operation and maintenance of the Work and delivery of current record documents and operation & maintenance data to ENGINEER for OWNER in accordance with General and Supplementary Condition 6.19, CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that the ENGINEER issue a certificate of Substantial Completion.”

Add the following new subparagraph immediately after SC-14.8:

“SC-14.8.1 Once the project is deemed substantially complete in accordance with paragraph 14.8 of the General Conditions, Contractor shall apply for its next progress payment request, and OWNER will pay as its next progress payment to contractor an amount sufficient to increase total payments to CONTRACTOR to 100% of the final contract price, Less any retainer provided under subparagraph 5.3 of Agreement, and a retained amount which shall be equal two times the dollar value of any work remaining to be completed, as determined by ENGINEER and agreed to by OWNER; less retained amounts necessary to satisfy any claims, liens or judgments against the CONTRACTOR which have not been suitably discharged; and less any other sums which may be lawfully deducted, the net retained amount being termed the “Final Payment.” If ENGINEER’S certificate of substantial completion contains a list of items to be completed or corrected (GC-14.8), CONTRACTOR’S first application for payment after issuance of notice of Substantial Completion shall also include CONTRACTOR’S schedule for completing or correcting such items”

Partial Utilization

Add the following sentence to the end of subparagraph 14.10.1 of the General Conditions:

“However, the OWNER reserves the right to delay accepting, using, or operating any part of the work until the entire work is completed.”

Final Inspection

Paragraph 14.11 of the General Conditions is hereby deleted in its entirety and the following is substitute in its place:

“SC-14.11 When Contractor considers Work or an agreed upon portion thereof is complete, written certification shall be submitted stating that the work is ready for final inspection, and specifically indicating that the Contractor has:

1. Reviewed Contract Documents
2. Completed Work in accordance with Contract Documents, and all deficiencies Listed with Certificate of Substantial Completion have been corrected.
3. Inspected Work for compliance with Contract Documents

After receipt of such certification and after completion of contractors cleaning of the area and equipment in accordance with sub-part entitled ‘Final Cleaning’ in this section, ENGINEER will make final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.”

Final Application for Payment

SC-14.12 Add the following Language to paragraph 14.12 of the General Conditions:

“ The application shall be made on forms provided by the ENGINEER. By signing the application and certificate for payment, the CONTRACTOR certifies that the total cost of the Work and the amount due the CONTRACTOR for payment is full compensation for all Work done under the terms of the contract in its original form; that payment is full compensation for all work ordered to be done under Change Orders; and that the payment is full compensation for all other work done by the CONTRACTOR for doing and furnishing everything relating to or arising out of the Work, and that the CONTRACTOR waives all rights to claim or receive any further compensation in addition to that provided for the Final Payment except as provided in paragraph 14.15.”

Final Payment and Acceptance

SC-14.13 Delete the phrase “Thirty Days” which begins the last sentence of paragraph 14.13 of the General Conditions and substitute in its place the phrase “Forty-five days.”

Add the following language to paragraph 14.13 of the General Conditions:

The amounts retained to satisfy any claims, liens, or judgments against CONTRACTOR will be released to CONTRACTOR if evidence satisfactory to OWNER is promptly furnished that such claims, liens, or judgments were suitably discharged. Any claims, liens, or judgments referred to in these Contract Documents shall

pertain to the project and must be filed in accordance with the terms of the applicable contract and/or applicable laws.”

SC-14.14 Delete the last two sentences of paragraph 14.4 of the General Conditions and add the following language to the end thereof:

“The amount retained to assure final completion of the work will be released to CONTRACTOR when all items are completed and the Work is acceptable to ENGINEER; such payment will be made by OWNER within forty-five (45) days after the date he receives notification from the ENGINEER that work is acceptable complete. The amounts retained to satisfy any claims, liens, or judgments against CONTRACTOR will be released to CONTRACTOR if evidence satisfactory to OWNER is promptly furnished that such claims, liens, judgments were suitably discharged. Any claims, liens or judgments referred to in these Contract Documents shall pertain to the project and must be filed in accordance with the terms of the applicable contract and/or applicable laws.”

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

SC- 15.2.4 Insert the word “applicable” in front of the term “Laws and Regulations” as the same appears in paragraph 15.2.4

SC-15.4.2 Strike the last phrase of the last sentence reading “plus fair and reasonable sums for overhead and profit on such expense.” And replace it with the following: Plus overhead and profit on such expense in the manner described in paragraph 11.4 and 11.5.”

SC-15.5 CONTRACTOR May stop Work or Terminate

Amend paragraph 15.5 of the General Conditions as Follows:

- a. Change the phrase “or OWNER fails for thirty days to pay CONTRACTOR any sum Finally determined to be due,” which begins on the fifth line of GC-15.5, to read: “or OWNER fails for sixty days to pay CONTRACTOR any sum finally determined to be due.”
- b. Change the phrase “ or OWNER has failed for thirty days to pay CONTRACTOR any Sum finally determined to be due.” Which begins on the fifteenth line of GC-15.5, to read; “or OWNER has failed for sixty days to pay CONTRACTOR any sums finally determined to be due.”

ARTICLE 16- MEDIATION

Delete the title of Article 16 and replace with “MEDIATION”

Delete all of Article 16 of the General Conditions and substitute in its place the following:

MEDIATION

SC-16.1 Claims, disputes, or other matters in controversy arising out of or related to the agreement except those waved as provided for in the Contract Documents shall be subject to mediation. The terms of this Article 16 shall survive the owner’s acceptance of the work or termination of the Contract.

SC-16.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its

Construction Industry Mediation Procedures in effect on the date of the agreement (but specifically excluding any provision therein, of law or otherwise, adopting or referencing local, federal, or state law or the effect of which would be to permit, or otherwise authorize, enforcement of such mediation decision). A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the Mediation.

SC-16.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the project is located, unless another location is mutually agreed upon.

ARTICLE 17- MISCELLANEOUS

17.2 Computation of Times

SC-17.2.1 Legal holidays shall include those defined as such by the laws of the Nation, The United States or the State of New York.

17.4 Cumulative Remedies

Insert the following language at the beginning of paragraph 17.4:

"Except as limited by sections 17.7 and 17.8 of the Supplementary Conditions,"

Add the following under Article 17:

17.6 Equal Opportunity

SC-17.6.1 CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, or national origin. Such action shall include but not be limited to, employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

SC-17.6.2 CONTRACTOR will state in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, marital status, national origin, ancestry, present or past history of mental disorder, mental retardation, or physical disability, including but not limited to, blindness.

SC-17.6.3 CONTRACTOR will send to each labor union or representative of workers with which it has collective bargaining agreement or other contract or understanding a notice advising the labor union or workers representative of CONTRACTOR'S commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment,

17.8 Limited Liability of OWNER

SC-17.8 Notwithstanding anything herein to the contrary, the liability of OWNER to CONTRACTOR and/or any other person in connection with the Project and the Contract shall not in the aggregate exceed the then remaining amounts, if any, of monies allocated to the Project under the Bond Documents. Furthermore, in no event shall OWNER'S liability resulting from work performed hereunder exceed CONTRACTOR'S liability

in connection therewith. Notwithstanding the provisions of this paragraph 17.11, nothing herein shall be construed or interpreted to be a waiver of sovereign immunity by OWNER.

17.9 Seneca Nation of Indians Tribal Employment Rights Ordinance.

SC-17.9 Contractor hereby acknowledges the Seneca Nation of Indians Tribal Employment Rights Ordinance (TERO) attached to the General Conditions as Exhibit GC-B. CONTRACTOR, by its execution of the General Conditions and Supplementary Conditions, represents that it has read and understands fully the requirements of TERO, and CONTRACTOR hereby agrees that it is bound by and will fully comply with TERO and any other amendments or modifications thereto, including but not limited to any actions taken by the Seneca Nation of Indians pursuant to TERO. CONTRACTOR agrees that, if for any reason, the Seneca Nation of Indians determines that CONTRACTOR cannot continue to discharge its duties under the Contract, such determination shall be considered a substantial breach of the Contract Documents by the CONTRACTOR, at which time OWNER shall have the benefit of all rights, remedies and redress against CONTRACTOR that the Seneca Nation of Indians has against OWNER under TERO. CONTRACTOR acknowledges that it is responsible for any fees required to be paid for the project pursuant to TERO unless CONTRACTOR has been notified in writing that such requirement has been formally waived by the Seneca Nation.

17.10 Confidentiality

SC-17.10.1 The Parties agree that this Agreement and all information and data exchanged by them in accordance with the Contract that is non-public, proprietary and/or confidential in nature, including but not limited to any and all drawings, specifications. Plans and methodology drafted and/or utilized in connection with the project, shall be maintained in strict and absolute confidence, except upon prior written notice and with respect to disclosure (i) pursuant to the sale, disposition or other alienation (directly or indirectly) of a Party's rights and interest in and to the Contract, (ii) pursuant to the sale or other disposition (directly or indirectly) of all or substantially all of a Party, (iii) in conjunction with merger, consolidation, share exchange or other form of statutory reorganization involving a Party, (iv) to lenders, accountants, and other representatives of the disclosing Party with need to know such information, (v) as required to make disclosure in compliance with any law, under compulsion of judicial process, to comply with this Agreement and its objectives, or (vi) to Parties accountants, attorneys, and any government entity (where required), provided that the disclosing Party shall be liable for any disclosure by the receiving person to the extent such disclosure would not be permitted by this Section if made by the disclosing Party.

SC17.10.2 CONTRACTOR agrees not to mention the Project or use the name, logo or any other marks owned by or associated with OWNER or the Seneca Nation of Indians, including without limitation the name of any representative of OWNER or the Seneca Nation of Indians, including without any limitation the name of any representative of OWNER, in any sales promotion work or advertising, or any form of publicity, without the written permission of OWNER in each instance.

17.11 Buy American Act- Supplies and Construction Materials.

SC-17.11 CONTRACTOR agrees to comply with the requirements of United States 43 CFR 12.700 through 12.730 (Buy American Act- Supplies) and 43 CFR 12.800 through 12.830 (Buy American Act-Construction Materials).

17.12 Registration with Central Contractor Registration (CCR) Database.

The contractor shall register with the CCR database (www.ccr.gov) and complete other registration requirements as determined by the Director, Office of Management and Budget.

SC-17.12 ARBITRATION

SC-17.12 Any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement (but specifically excluding any provision therein, of law or otherwise, adopting or referencing local, federal, or state law, or the effect of which would be to permit or otherwise authorize, enforcement of such arbitration award). A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The Party filing a notice of demand for arbitration must assert in the demand all claims the known to that party on which arbitration is permitted to be demanded.

A demand for arbitration shall be made no earlier than concurrently with filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitation purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on claim.