

27. AUTHORITY OF THE ENGINEER

In the performance of the work, the Contractor shall abide by all orders and directions and requirements of the Engineer, at such time and places, by such methods, and in such manner and sequence as he may require. The Engineer shall determine the amount, quality, accept- ability, and fitness of all parts of the work, shall interpret the Plans, Specifications, Contract Documents and any extra work orders and shall decide all other questions in connection with the work, upon request, the Engineer shall confirm in writing any oral orders, directions, requirements or determinations. The enumeration herein or elsewhere in the Contract Documents of particular instance in which the opinion, judgment, discretion or determination of the Engineer shall control or in which work shall be performed to his satisfaction or subject to his approval or inspection, shall not imply that only matters similar to those enumerated shall be so governed and performed, but without exception all the work shall be governed and so performed.

28. CHANGES AND ALTERATIONS

The Engineer reserves the right to make alterations in location, line, grade, plan, form or dimension of the work, or any part thereof, either before or after the commencement of construction. If such alterations diminish the amount of work to be done, no claim for damages or anticipated profits will be warranted on the work, which may be dispensed with. If such alterations increase the amount of work, such increases shall be paid for according to the quantity of work actually done and at the prices for such work as contained in the schedule of prices.

29. CORRECTION OF WORK

All work and all materials whether incorporated into the work or not, all processes of manufacture and all methods of construction shall be at all times and places subject to inspection of the Engineer who shall be the final judge of quality, materials, processes of manufacture and methods of construction suitable for the purpose for which they are used. Should they fail to meet his approval, they shall be forthwith reconstructed, made good and replaced and/or corrected as the case may be, by the Contractor, at his own expense. If, in the opinion of the Engineer, it is not desirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Engineer shall be equitable. The Contractor expressly warrants that his work shall be free from any defects in materials or workmanship and agrees to correct any defects, which may appear within one year following the final completion of the work. Neither the acceptance of the completed work nor payment therefore shall operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance Bond.

30. THE OWNER'S RIGHT TO WITHHOLD PAYMENTS

The Owner may withhold from the Contractor so much of any approved payments due him as may, in the judgment of the Owner, be necessary: (a) To assure the payment of just claims then due and unpaid of any persons supplying labor or materials or the work; (b) To protect the Owner from loss due to defective work, labor or materials not remedied; (c) To protect the Owner from loss due to injury to persons or damage to the work or property of other contractors or subcontractors of others, caused by the act or neglect of the Contractor or any of his subcontractors; or (d) As a result of any alleged malfeasance or indictment or criminal charges on the part of the Contractor arising out of or in connection with the subject bid and/or any municipal bid or contract, until such time as there is a final determination on the issue of any alleged malfeasance, indictment or criminal charges. The Owner shall have the authority, as agent for the Contractor to apply such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to secure such protection. Such applications of such money shall be deemed payment for the account of the Contractor. In the event that the bidder/Contractor is determined guilty after trial or enters a plea to any criminal act arising out of or in connection with any Village contract, the Contractor acknowledges and agrees no monies shall be due the bidder/Contractor and any monies paid under the Contract shall be due to and returned to the Village.

31. THE OWNER'S RIGHT TO STOP WORK/SUSPEND OR TERMINATE CONTRACT

If during the course of a contract, the Bidder/Contractor or Supplier/Subcontractor is not in compliance with the requirements of this bid, or the Village Code, or any applicable law, rules or regulations, the bidder/contractor hereby acknowledges that the Village Attorney may immediately suspend work upon twenty-four hours' notice and take whatever action is deemed appropriate.

Notwithstanding the above, the Owner at its sole discretion reserves the right, and the Contractor hereby acknowledges that the Owner shall have the right, to either stop work or terminate upon:

(a) Any alleged malfeasance or indictment or criminal charges on the part of the Contractor arising out of or in connection with the subject bid and/or any municipal bid or contract, the Owner at its sole discretion reserves the right to suspend or terminate the contract until such time as there is a final determination on the issue of any alleged malfeasance or indictment or criminal charge(s); or (b) The Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors; or (c) A receiver or liquidator shall be appointed for the Contractor for any of his property and shall not be dismissed within 20 days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said 20 days; or (d) The Contractor shall refuse or fail, after notice or warning from the Engineer, to supply enough properly skilled workmen or proper materials; or (e) The Contractor shall refuse or fail to prosecute the work or any part thereof with such diligence as will insure its completion within the period herein specified or any duly authorized extension thereof) or shall fail to complete the work within said period; or (f) The Contractor shall fail to make prompt payments to persons supplying labor or materials for the work; or (g) The Contractor shall fail or refuse to regard laws, ordinances or the instructions of the Engineer or otherwise be guilty of a substantial violation of any provisions of this Contract; then upon the occurrence of any such event, the Owner, without prejudice to any other rights or remedy it may have, may by seven (7) days' notice to the Contractor, terminate the employment of the Contractor and his rights to proceed either as to the entire work or at the option of the Owner as to any portion thereof, and the Owner may take possession of the work and complete the work by contract or otherwise, as the Owner may deem expedient. In such case, the Contractor will not be entitled to receive any further payment until the work is finished.

If the unpaid balance of the compensation to be paid the Contractor hereunder shall exceed the expense of so completing the work (including compensation for additional managerial, administrative and inspection services and any damages for delay), such excess shall be paid to the Contractor, unless the Owner deems it necessary to withhold payment as provided under the paragraph 30 entitled "Owner's Right to Withhold Payments". If such expense shall exceed such unpaid balance, the Contractor and his sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the work is so terminated, the Owner may take possession of and utilize in completing the work, such materials, appliances, supplies, plant and equipment as may be on the site of the work and necessary thereof. If the Owner does not so terminate the right of the Contractor to proceed, the Contractor shall continue to work.

32. OWNER'S RIGHT TO SUSPEND OR TERMINATE FOR CONVENIENCE OR NECESSITY

The Owner upon seven (7) days' notice may suspend or terminate this Contract for convenience or necessity as follows: (i) if the Work is discontinued, cancelled or terminated for any reason by the Owner, or (ii) when the Owner for any reason, with or without cause, or otherwise deems it in the best interest of the Village. In such event of such suspension or termination, the Owner shall pay the Contractor the costs for the Work incurred by the Contractor up to the effective date of termination, unless the Owner deems it necessary to withhold payment as provided in paragraph 30, Owner's Right to Withhold Payments. Notwithstanding anything to the contrary, in the event that the Village suspended the work, Contractor shall resume the work on the date as advised by the Village.

33. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

If the work shall be stopped by order of the Court or any other public authority for a period of three (3) months, other than the Village of Mastic Beach, without act or fault of the Contractor or any of his agents, servants, employees or subcontractor, the Contractor may, upon ten (10) days' notice to the Owner, discontinue his performance of the work and/or terminate the Contract. In which event, in the paragraph immediately preceding (Paragraph 34), the Contractor shall not be obligated to pay to the Owner any excess of the expense of completing the work over the unpaid balance of compensation to be paid the Contractor hereunder.

34. RESPONSIBILITY FOR WORK

The Contractor agrees to be responsible for the entire work embraced in this Contract until its completion and final acceptance, and that any unfaithful or imperfect work that may become damaged from any cause either by act of commission or omission to properly guard and protect the work that may be discovered at any time before the completion and acceptance shall be removed and replaced by good and satisfactory work without any charge to the Owner, and that such removal and replacement will be performed immediately on the requirement of the Engineer, notwithstanding the fact that it may have been overlooked by the proper inspector, and partial payment made thereon. It is fully understood by the Contractor that the inspection of the work shall not relieve him of any obligation to do sound and reliable work as herein prescribed, and that any omission to disapprove any work by the Engineer at or before the time of partial payment or other estimate shall not be construed to be acceptance of any defective work.

35. USE OF PREMISES AND REMOVAL OF DEBRIS

The Contractor expressly undertakes at his own expense:

- (a) To store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any of his subcontractor;
- (b) To frequently clean up all refuse, rubbish, scrap materials and debris caused by the operations to the end that at all times, the site of the work shall present a neat, orderly and workmanlike appearance;
- (c) Before final payment hereunder to remove all surplus material, temporary structures, plants of any description and debris of every nature resulting from his operations.

36. SUITS OF LAW

The Contractor shall indemnify and save harmless the Owner, its officers, employees, agents, servants from and against all suits, claims, demands or actions, suits, arbitrations, judgments and/or executions, plus attorneys' fees for any injury, bodily injury, personal injury, wrongful death, property damages sustained or alleged to be sustained by any party or parties in connection with the construction of the work or any part thereof, or any commission or omission of the Contractor, his employees, officers, servants or agents or of any subcontractor, and in case of any such action shall be brought against the Owner, the Contractor shall immediately take charge of and defend the same at his own cost and expense. This provision shall be deemed effective when the Contractor first performs any work for the Village, and shall survive the termination, expiration and/or renewals of this Agreement until the latter of either the running of the applicable statute of limitations, or the final resolution of any outstanding claims, actions, suits, liens, judgments and/or executions.

37. POWER OF THE CONTRACTOR TO ACT IN AN EMERGENCY

In case of an emergency, which threatens loss or injury to property and/or safety of life, the Contractor will be permitted to act as he sees fit without previous instructions from the Engineer. He shall notify the Engineer thereof immediately and any compensation claimed by the Contractor due to extra work made necessary because of his acts in such emergency shall be submitted to the Engineer for approval. Where the Contractor has not taken action but has notified the Engineer of an emergency indicating injury to persons or damage to adjoining property or to the work being accomplished under this Contract, then upon authorization from the Engineer to prevent such threatened injury or damage, he shall act as instructed by the Engineer. The amount of reimbursement claimed by the Contractor on account of any such action shall be determined in the manner provided herein for the payment of extra Work.

38. PROVISION REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Contract, shall be deemed to be inserted herein and if through mistake or otherwise, any such provision is not inserted or is not correctly inserted then upon the application of either party the Contract shall forthwith be physically amended to make such insertion.

39. SUBLETTING, SUCCESSOR AND ASSIGNS

The Contractor shall not sublet any part of the work under this Contract nor assign any money due him hereunder without first obtaining the written consent of the Owner. This Contract shall insure the benefit of and shall be binding upon the parties hereunder and upon their respective successors and assigns, but neither party shall assign or transfer his interest herein in whole or in part without consent of the other.

40. GENERAL MUNICIPAL LAW CLAUSE

Pursuant to the provisions of Section 103-a of the General Municipal Law, in the event that the Bidder of any member, partner, director or officer of the Bidder, should refuse, when called before a grand jury to testify concerning any transaction of contract had with the State, and political subdivision thereof, a public authority or any public department, agency or officials of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, such person, and any firm, partnership, or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or any public department, agency or official thereof for goods, work or services for a period of five (5) years after such refusal, and any public department, agency or official thereof on or after the first day of July, 1959, by such person, and by any firm, partnership or corporation of which he is a member,

partner, director or officer may be cancelled or terminated by the municipal corporation without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the municipal corporation for goods delivered or work done prior to the cancellation or termination shall be paid.

41. GRADES, LINES, LEVELS, AND SURVEYS

The Engineer shall furnish the Contractor with the basic horizontal and vertical controls from which the Contractor shall transfer and stake his lines and grades and for their accuracy. The Engineer will establish the basic horizontal and vertical controls at the start of the work and it shall be the responsibility of the Contractor to safeguard such controls and if in the opinion of the Engineer these controls are damaged or destroyed either in whole or in part, the Contractor shall pay the cost of having the damaged controls verified, checked, corrected or replaced.

42. HANDLING OF ASBESTOS

If any part of the work to be performed under this Contract or any amendment thereto required the Contractor to submit a valid asbestos handling license or other proof of the issuance of a valid asbestos handling license deemed suitable by the NYS Commissioner of Labor, prior to the award or amendment to this Contract. (a) The Contractor certifies that no person or supervising personnel employed by the Contractor or any of his subcontractors at any tier shall engage in work requiring an asbestos handling license, unless each person and/or supervisor has a valid asbestos handling certificate. (b) The Contractor shall notify the Village of Mastic Beach of any expiration, revocation or non-renewal of any asbestos handling license required under this Contract. (c) This Contract may be terminated for default if the Contractor Violates this clause, or any law, rule or regulation of the United States or the State of New York as amended pertaining to the handling of asbestos.

43. HANDLING OF ASBESTOS-AMENDMENTS

If any part of the work to be performed under any amendment to this Contract involves the installation, removal, encapsulation, application or enclosure of any asbestos or asbestos material, or the disturbance of friable asbestos, a copy of a valid asbestos handling license deemed suitable by the New York State Commissioner of Labor shall, if not previously submitted under this Contract, as amended, be submitted by the Contractor to the Village of Mastic Beach prior to the amendment to this Contract.

44. INSURANCE REQUIREMENTS

The Contractor shall furnish the Village of Mastic Beach with certificates of each insurance company, insuring the contractor or any subcontractor permitted under this Contract.

All certificates and the insurance policies shall bear the policy numbers, the expiration date of the policy, and the limits of liability hereunder. Both the certificates and the policies shall be endorsed to provide the Village of Mastic Beach with any notice of cancellation at least 20 days prior to the actual date of such cancellation. FAILURE TO MAINTAIN INSURANCE DURING THE TERM OF THE CONTRACT SHALL BE GROUNDS FOR TERMINATION FOR DEFAULT. Said certificates and policies shall name the Village of Mastic Beach, its officers and employees as additional insureds, except for the owners and contractors protective liability policy, which shall name the Village of Mastic Beach as the sole insured.

THE VILLAGE MUST BE NAMED AS ADDITIONAL INSURED ON THE POLICIES AND CERTIFICATES OF INSURANCE AS FOLLOWS: VILLAGE OF MASTIC BEACH AND VILLAGE BOARD OF THE VILLAGE OF MASTIC BEACH AND TRUSTEES OF THE FREEHOLDERS AND COMMONALTY OF THE VILLAGE OF MASTIC BEACH, MEMBERS OF THE VILLAGE BOARD AND OTHER GOVERNING BODIES AND EMPLOYEES OF THE VILLAGE, WHILE ACTING IN THE SCOPE OF THEIR DUTIES AS SUCH INCLUDING NON-RENUMERATED VOLUNTEERS WHILE PERFORMING SERVICES FOR THE VILLAGE.

Additionally, the Contractor shall defend, indemnify and save harmless the Village of Mastic Beach from and against all losses, and all claims, demands, payments, suits, actions, recoveries, judgments, costs and expenses including without limitation attorney's fees, in connection therewith, of every nature, including but not limited to claims for bodily injury, or death, by any third party and by or on behalf of the contractors, agents, servants or employees, arising out of or in connection with the work which is the subject of this contract, and caused, in whole or in part, by the contractor, its agents, servants or employees. It is the intention of the Village of Mastic Beach and the contractor to reallocate the risk of loss as between the Village of Mastic Beach and the Contractor, for liability to third parties, in connection with the work which is the subject of this contract, through the contractor's purchase of insurance to protect the Village of Mastic Beach.

1.COMMERCIAL GENERAL LIABILITY - Comprehensive general liability shall be required by the Village of Mastic Beach with limits of no less than \$2,000,000 general aggregate (for both bodily injury and property damage), \$1,000,000 per occurrence. Coverage shall be issued on a per location or per project basis. In addition, said policy is to provide coverage for (a) premises operations (b) completed operations/products liability, (c) explosion, collapse and underground (when required for work to be performed underground), (d) independent contractors, (e) broad form property damage, (f) contractual liability, (g) personal injury

liability. The following endorsements shall be provided as part of the forgoing coverage: (i) cross suit exclusion endorsement must be eliminated on primary and excess liability policies; (ii) C2010 must be endorsed to delete "ongoing" so as to provide additional insured completed operations coverage for a period of not less than 2 years after the completion date of the work performed and (iii) wording on additional insured endorsement shall state that "no valid and collectible insurance and/or self-insurance of the additional insured should be considered anything other than excess of the named insured, its contractors, subcontractors or sub-subcontractors".

2.AUTOMOBILE POLICY - Commercial automobile coverage shall be required by the Village of Mastic Beach with limits of not less than \$1,000,000 coverage for bodily injury and property damage. The policy and certificate shall provide coverage for "any auto", "hired auto" and "non-owned auto" with symbols 1, 8 & 9 reflected on the certificate of insurance.

3.WORKERS COMPENSATION INSURANCE - Proof of workers compensation insurance must be submitted to the Village of Mastic Beach as required under New York Law Statutory Limits.

4.DISABILITY BENEFITS LIABILITY INSURANCE - Proof of disability benefits liability insurance must be submitted to the Village of Mastic Beach as required by New York Law Statutory Limits.

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1. DEFINITION OF TERMS

Whenever the following words and expressions are used in the Specifications, it is understood that they have the meaning defined below:

PLANS: The body of directions, requirements, descriptions, etc. contained in this document, together with all documents of any description and agreement made (or to be made) pertaining to the methods or manner of performing the work and/or to the quantities and quality of materials to be furnished and accepted under this Contract.

OWNER: Shall mean Village Board, Village of Mastic Beach, its officers, employees, agents and servants.

ENGINEER: Consulting Engineers engaged by the Owner and duly authorized to represent the Owner in the execution of the work covered by the consultants and assistants engaged by the Engineer to the extent of the particular duties entrusted to them.

CONTRACT: Collectively, the Contract executed by the Owner and the Contractor, Notice to Bidders, Instructions to Bidders, Proposal Form, Form of Bond, Conditions of Contract, General Conditions, Specifications, Construction Drawings, Addenda, Performance Bonds, and all supplemental agreements made or to be made.

CONTRACTOR: The party of the second part hereto, including but not limited to, whether bidder, corporation, firm or individual, principle, member or employee or any combination thereof, and successor, personal representatives, executors, administrators and assigns, and any person, firm or corporation who or which shall at any time be substituted in place of the second part under this Contract.

INSPECTOR: An authorized representative of the Owner or his Engineer assigned to make any and all necessary inspections of the work performed and the materials furnished by the Contractor.

MATERIALS: Any approved materials acceptable to the Engineer and conforming to the requirements of these Specifications.

WORK: All of the work proposed to be accomplished at the site of the project, and all such other work as is in any manner required to accomplish the complete project. This includes all plant, labor, materials, supplies, equipment and other facilities and acts necessary or proper or incidental to the carrying out and completion of the terms of this Contract. The term "work performed" shall be construed to include the material delivered to and suitably stored at the site of the project.

2. STANDARDS OF WORKMANSHIP

The apparent silence of the Specifications as to any detail or an apparent omission from the of a detailed description concerning any work to be done and materials to be furnished shall be regarded as meaning that only the best general practice observed in the latest current construction work is to prevail and that only material and workmanship of first quality is to be used in this connection and all interpretations of these Specifications shall be made upon this basis.

3. SAMPLES

The Contractor shall furnish for approval, all samples as directed. The work shall be in accordance with approved samples. Samples shall be submitted in ample time so as to prevent delay in fabrication or ordering of materials, allowing for a reasonable time for the Engineer to consider the samples submitted and, if necessary, to permit a resubmission of samples to the Engineer until approval is given.

Work and material shall be furnished and executed in accordance with approved samples, in every aspect. Each sample shall be labeled, bearing material, and name and quality, Contractor's name, date and other pertinent data. Unless otherwise specified, samples shall be in duplicate and of adequate size to show quality, type, color, range and finish and texture of material. Materials shall not be ordered until approval is received in writing from Engineer.

4. MANUFACTURED MATERIALS

Where several materials are specified by name, the Engineer shall have the right, before execution of the Contract, to require any and all bidders to state the materials upon which they based their bid. Where any materials are specified by name or trade name, or by catalog number of a company or companies, the Contractor shall furnish the article mentioned unless approval of the Engineer

is obtained in writing for a substitution. Should Contractor desire to substitute another material for one or more specified by name, he shall apply in writing for such permission and state credit or extra involved. He shall also provide supporting data and samples for Engineer's consideration. Unless particularly specified otherwise, all manufactured articles, materials and equipment shall be applied, assembled, installed, connected, erected, used, cleaned and conditioned as directed by the manufacture and including the necessary preparation to properly install the work. Where reference is made to manufacturer's directions, the Contractor shall submit such directions to the Engineer as required. The materials used in construction shall be disposed as not to endanger the work, and so that full access may at all times be has to partly completed work and structures and they shall be so disposed as to cause no injury to those having access to the work or any of the units. All labor shall be performed in the best and most workmanlike manner by mechanics skilled in their respective trades. Standards of work required throughout shall be of such grades as will bring results of first class only. The type of labor employed by the Contractor shall be such as will insure the uninterrupted continuity of the entire work, without conflict of any kind.

5. LABORATORY

Laboratories shall be designated by the Engineer for testing the material to be used under the Contract. Where tests are made by other than the designated laboratories, two certified copies showing correctly the chemical analysis and physical tests shall be furnished to the Engineer.

6. SHOP DRAWINGS

The Contractor shall submit to the Engineer, four (4) copies of all shop drawings and schedules and no work shall be fabricated until his approval has been given. All shop drawing submitted to the Engineer must bear the Contractor's stamp of approval evidencing that the drawings have been checked. The Contractor will make any corrections in the drawings required by the Engineer and will file with the Engineer four corrected copies. Approval by the Engineer of such drawings or schedules shall not relieve the Contractor from responsibility for (a) errors of any sort in shop or setting drawings or schedules; or (b) deviations from Plans and Specifications unless the Contractor, at the time of submission of said drawings and schedules, has given notice to the Engineer of any such deviations.

7. PERMITS

PROOF SHALL BE SUBMITTED WITH EACH BID THAT THE OPERATION FROM WHICH THE MATERIAL IS ORIGINATING COMPLIES WITH ALL REQUIREMENTS OF THE CODE OF THE VILLAGE OF MASTIC BEACH AND THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

A. **MUNICIPAL**: All work in connection with the installation of pipes or other underground structures of a like nature either within or without the limits of the highway, shall follow all the provisions, as they apply, of the Highway Law, Roads opening, Section 149, and Section 208 Village Law, with all subsequent changes, additions or corrections thereto.

B. **SUFFOLK COUNTY**: All permits required for opening County roads and making connects with County drains will be obtained by the Owner. A copy of the permit, which must be kept on the job at all times, will be supplied to the Contractor. The Contractor will not be permitted to open any County drain until he has been supplied with this permit.

C. **STATE OF NEW YORK**: The Contractor shall obtain all necessary New York State highway permits whenever the Contract requires any work to be done within or upon existing State highway right-of-ways. These permits shall be obtained from the District Office in Hauppauge prior to the performance of the work. Upon application for the permit, the Contractor will be required to supply the following: (1) Three (3) copies of a sketch or print showing description and location of the proposed work. The Engineer will supply these prints to the Contractor. (2) Contingent liability insurance for the State (in addition to his own liability insurance) shall be furnished in amounts and manner as required by the State of New York. The contingent protective liability and completed operations liability insurance policy to cover: "The people of the State of New York and/or the Superintendent of Public Works covering liability arising with respect to all operations through highway permits by permittee or by anyone acting by, through or for the permittee, including omissions and supervisory acts of the State", in the amount of personal injury (including death) and property damage as required.

8. PLANS AND SPECIFICATIONS

The Contractor will be furnished with five sets of Plans and Specifications giving all the details and dimensions necessary for carrying out the work. One copy of Plans and Specifications furnished to the Contractor must be kept constantly on the site. Anything shown on the Plans and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Plans and all the work and materials necessary for the completion of the work according to the intent and meaning of the contract shall be furnished, performed and done as if the same were both mentioned in the Specifications and shown on the Drawings. Any conflict or inconsistency between the Plans and Specification or any discrepancy between the figures and scale of Drawings shall be submitted by the Contractor to the Engineer, whose decision thereon shall be conclusive. In the event the meaning of any portion of the Specifications or Drawings or any supplementary drawings or instructions of the Engineer is doubtful, the same shall be understood to call for the best type of construction, both as to materials and workmanship, which reasonably can be interpreted. All materials and workmanship must be strictly in accordance with the specifications.

The plans show approximate size, arrangement and location of the proposed work. The Engineer will give base lines, grades, shapes and dimensions and the Contractor shall construct the work exactly in accordance with such instructions of the Engineer subject, however, to change as provided for under the headings "Changes and Alterations" and "Compensation to be Paid to the Contractor". Additional copies of Plans and Specifications, when requested, will be furnished to the Contractor at cost of reproduction. The Contractor shall furnish to each of the subcontractors and material-men such copies of the Contract Document as may be required for their work

9. CUTTING, PATCHING AND DIGGING

The Contractor shall do all cutting, fitting or patching of his work that may be required to receive or be received by work of other contractors shown upon or reasonably implied by drawings and Specifications for the completed structure, and he shall make good after them as Engineer may direct. Any cost caused by defective or ill-timed work shall be borne by the party responsible therefore. The Contractor shall not endanger any work by cutting, digging or otherwise, and shall not cut or alter the work of any other contractor save with the consent of the Engineer.

10. ERRORS, OMISSIONS AND DISCREPANCIES

a) If any errors, omissions or discrepancies appear in the drawings, Specifications or other documents, the Contractor shall, within ten days from receiving such Drawings, Specification or Documents, notify the Engineer in writing of such errors or omissions. In the event of the Contractor's failing to give such notice, he will be held responsible for the results of any such errors or omissions and the cost of rectifying the same. b) If, in the opinion of the Contractor, any work is shown on Drawings, or details, or is specified in such a manner as will make it impossible to produce a first class piece of work, or should discrepancies appear between the Drawing and/or Specifications, he shall refer the same to the Engineer for interpretation before proceeding with the work. If the Contractor fails to make such references to the Engineer, no excuse will thereafter be entertained for failure to carry out the work in satisfactory manner as directed. c) Should a conflict occur in or between the Drawings and Specifications and/or existing conditions, the Contractor shall be deemed to have estimated on the more expensive way of doing the work, unless he shall have asked for and obtained a decision in writing for the Engineer, before the submission of bids, as to which method or material will be required. The Engineer will determine which method or material will produce the results to the best interest of the Village.

11. TEMPORARY TOILET

The Contractor shall provide and maintain a sanitary temporary toilet where directed by the Engineer. The temporary toilet shall be enclosed and weatherproof and kept in a sanitary condition at all times. Upon removal of the temporary outside toilet, the vault shall be disinfected, filled and all evidence of the toilet removed from the site.

12. PROPER METHOD OF WORK AND PROPER MATERIALS

The Engineer shall have the power in general to direct the order and sequence of the work, which shall be such as to permit the entire work under this contract to be begun and to proceed as rapidly as possible and such as to bring the several parts of the work to a successful completion at about the same time. If at any time before the commencement or during the progress of the work the

materials and appliances used or to be used appear to the Engineer as insufficient or improper for assuring the quality of the work required, or the required rate of progress, he may order the Contractor to increase their efficiency or to improve their character, and the failure of the Engineer to demand any increase of such efficiency or improvement shall not release the Contractor from his obligation to secure the quality of work or the rate of progress specified. During freezing or inclement weather, no work shall be done except such as can be done satisfactorily and in a manner to secure first-class construction throughout. All work shall be done in such manner as will properly protect and support existing permanent structures, pipe lines, etc.

13. INSPECTION

Inspectors shall be authorized to inspect all work done on materials furnished. Such inspections may extend to all parts of the work and to the preparation or manufacture of the materials to be used. In case of any dispute arising between the Contractor and the Inspector as to materials furnished or the manner of performing the work, the Inspector shall have the authority to reject material or suspend the work until the question at issue shall be referred to and decide by the Engineer. The inspector shall not be authorized to revoke, alter, enlarge, relax or release any requirements of these Specifications nor to approve or accept any portion of the work, nor to issue instruction contrary to the Plans and Specifications. The Inspector shall in no case act as foreman or perform other duties for the Contractor or interfere with the management of the work by the latter. Any advise which the Inspector may give the Contractor shall in no way be construed as binding the Engineer nor the Owner in any way nor releasing the Contractor from the fulfillment of the terms of the Contract. The Contractor shall be conclusively presumed to be acquainted with all existing conditions and to guarantee that all work and to the Owner and materials shall, upon final completion of the work, be turned over to the Owner in a complete and perfect condition and he shall be responsible for the proper care, maintenance and protection of all work and material until his entire Contract is completed and all work and materials found in good condition and accepted. The Contractor will be held responsible for the entire work until completed and accepted by the Engineer and the Owner. The Contractor shall, at all times, provide the Owners, Engineer, assistants and inspectors under him with necessary facilities for determining both on the work and at the places of manufacture, that all work being performed and all materials being manufactured are strictly in accord with the Contract. Until acceptance of work by the Owner, the Contractor shall be responsible for all damages to the work including action of the elements or any other cause whatsoever. The Contractor shall continuously and adequately protect the work against damage from any cause.

14. WAIVER

Neither the inspection by the Owner or Engineer or any part of their employees nor any order, measurement or certificate by the Engineer nor any order by the Owner for the payment of any money nor any payment for or acceptance of, the whole or any part of the work by the Engineer or the Owner nor any extension of time nor any possession taken by the Owner or its employees shall operate as a waiver of any provision of this Contract or Any power herein reserved to the Owner or any right to damages herein provided; nor shall any waiver of any breach of the Contract constitute a waiver of any subsequent breach. Any remedy provided in this Contract shall be construed as cumulative; that is in addition to each and every remedy herein provided.

15. WATER AND ELECTRIC POWER

All water and electric power supply for construction purposes must be provided by the Contractor. The cost shall be borne by the Contractor.

16. MACHINERY AND EQUIPMENT

All machinery, equipment, trucks and vehicles used in the prosecution of the work or in connection therewith, shall at all times be in proper working condition. The Contractor shall be responsible for curtailing noise, smoke, fumes or any other nuisance resulting from his operations. He shall, upon written notification from the Engineer, make any repairs, replacements, adjustments, additions and furnish mufflers when necessary to fulfill these requirements.

17. MAINTENANCE

If, within one year from the date of issuance of the Final Certificate, any portion of the work shall, in the opinion of the Owner, require repairing, replacing, or rebuilding, the Contractor shall start such repairs within five (5) days after the receipt of notice from the Owner, and if the Contractor shall fail or neglect to start such repairs within the said five (5) days, the Owner may employ such other person or persons as they deem proper to make such repairs and pay the expense thereof out of any sum retained by

them, provided nothing herein contained shall limit the liability of the Contractor or his surety to the Owner for nonperformance of the Contractor's obligations at any time.

18. SCHEDULE OF OPERATIONS

Within 5 days after the signing of the Contract, the Contractor shall submit a proposed program of operations, showing clearly how he proposes to conduct the work so as to bring about the completion of his work within the time limit specified. This program shall outline the proposed sequence of operations, the rates of progress and the dates when his work will be sufficiently advanced to permit the installation of work under this Contract.

19. RIGHT TO USE WORK

The Owner may enter upon and use the whole or any portion of the work which may be in condition to use any time previous to its final acceptance by the Owner. Such use shall not constitute or be evidence of acceptance by the Owner or the Engineer of the whole or any part of the material furnished or work performed under the Contract.

20. NOTICE OF WARNING

If the Contractor shall fail to make prompt payment to persons supplying labor or materials for the work, or refuse or fail to supply enough properly skilled workmen or proper materials or refuse or fail to prosecute the work or any part thereof with such diligence as will insure its completion within the period herein specified (or any duly authorized extension thereof) or fail to complete the work within said period or fail or refuse to regard laws, ordinances, codes, instructions of the Engineer, then the Engineer shall forward by registered mail to the Contractor, at the address given in the Contract, a Notice of Warning, and in the event the Contractor fails to comply with said Notice of Warning within five (5) days from receipt thereof, the Owner shall have the right to terminate the Contract.

21. WARNING SIGNS

Contractor shall provide and maintain proper luminous warning and detour signs where directed by the Engineer. Obstruction such as stored materials, equipment and which excavations shall be marked with not less than two lights, which shall be not more than 4 feet apart. All lights shall be kept burning from one-half hour before sunset to until one-half hour after sunrise.

22. ACCIDENT PREVENTION

During the performance of the work, the Contractor shall exercise all reasonable precautions for the protection of persons and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment and all other physical hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America to the extent that such provisions are not inconsistent with Federal, State or Municipal laws and regulations. If any operation, practice or condition is deemed by the Engineer to be unsafe, he shall notify the Contractor in writing to take corrective action. Where in the opinion of the Engineer any operation, practice or condition shall be promptly discontinued and before the affected part of the work is resumed, remedial action taken. The Owner reserves the right to remedy any neglect on the part of Contractor as regards the protection of the work which may come to its attention, after 24 hours' notice in writing; except that in cases of emergency it shall have the right to remedy any neglect without notice, and in either case to deduct the cost of such remedy from money due the Contractor. Nothing in the foregoing paragraphs shall be construed as relieving the Contractor from full responsibility at all times for safe prosecution of the work.

23. DAMAGES

The Contractor shall pay and make good all losses or damages arising out of any cause connected with the Contract and shall indemnify and save harmless the Owner from any and all Claims and any and all liability or responsibility of every nature and kind for any loss, damage or injury which may be brought against the Owner or any of its officers or agents, by reason of, or connected with the work or materials furnished under the Contract and shall pay all costs and expenses of every kind, character, and nature whatever, occurring upon or arising out of the Contract.

24. MAINTENANCE OF TRAFFIC

All work under this Contract is to be completed within the time indicated in the Contract agreement or as extended by the Owner. If in the meantime it should become necessary, because of the lateness of the season, or any other reason to stop the work, the Contractor shall at his own expense, open proper drainage ditches, erect temporary structures where necessary, prepare the roads so there will be minimum interference with traffic, set up and maintain a competent organization as directed by the Engineer, to keep the highways in first class condition for traffic, and take every precaution to prevent any damage or unreasonably deterioration of the work during the time it is close.

25. FINAL SITE CLEARING

Before final payment will be approved, the Contractor shall prepare the construction areas as follows: All basins, manholes and pipe as constructed shall be cleaned free from accumulated construction dirt, silt, form work, etc., and all proper restoration as called for in the items of the Specifications shall be complete in every detail. The Contractor shall clean all construction areas free from accumulated forms, excavation fill, construction materials and construction shanties. All areas shall be completed in every detail and shall be broom cleaned from excess dirt and materials.

26. PROTECTION OF LAND MARKERS, TREES, SHRUBS, AND PROPERTY

Wherever in the conduct of the work, a monument marking a point of public or private survey is encountered or brought to view by excavation, the fact shall at once be communicated to the Engineer. In no case shall the Contractor remove the same until the location for resetting shall have been made by the Engineer. All monuments or land markings exposed to view when the work is first undertaken shall be carefully preserved and the greatest care exercised to prevent injury to or disturbance of position of the same. The unit price of all items shall include the cost of restoring to its former condition any sidewalks or curbs, as well as restoring any trees, shrubs or lawns that may be damaged during this construction. No additional payment will be made. The Contractor is required at his own expense to obtain any and all permits for use of private property if he uses such property for storage, transportation or accomplishment of the work under the Contract. Private property shall be cleaned up neatly and damage repaired and premises restored to their original condition.

27. PROTECTION OF UTILITIES

The Contractor shall familiarize himself with the existence of structures of municipal and other public service corporations on or adjoining the site of the work, and give reasonable opportunity to and cooperation with the owners of these utilities in the work of reconstructing or altering them. Such reconstruction and alteration shall be so conducted as to delay or interfere as little as practicable with the work of the Contractor. Any additional cost of various items of work because of these utilities shall be included in the price bid for these items. The Engineer shall direct the public utility corporations to shift or remove those utility structures that may be necessary to permit the Contractor to carry out the work in accordance with the Plans. The Contractor shall not remove or cause to be removed, any structure or part of a structure owned by a public utility corporation without the approval of the Engineer. The Contractor shall cooperate with the public utility corporation whose structures (aerial, surface or subsurface) are within the limits of or along the outside of the right-of-way, to make it possible for them to maintain uninterrupted service. The Contractor shall conduct his operations in such a way as to delay or interfere as little as practicable with the work of the utility corporation.

28. NO DAMAGES FOR DELAY

Notwithstanding any other provision to this Contract, the Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act of the Village of Mastic Beach or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein. This provision shall not apply to any act or omission to act of the Village of Mastic Beach or any of its representatives, wherein the same is done in bad faith and with deliberate intent to delay the Contractor in the performance of this Contractor.