

FORMS AND DOCUMENTS

**THE FOLLOWING FORMS SHALL BE UTILIZED
AS SPECIFIED IN THE TOWNSHIP CODE**

99.6.1. Form of Notice to Bidders

C: _____

99.6.1. Notice to Bidders

Township of Upper St. Clair
ALLEGHENY COUNTY, PENNSYLVANIA

99.6.1.1. **PROJECT Description:** Sealed BIDS will be received by the TOWNSHIP of Upper St. Clair, a home rule municipality, Allegheny County, Pennsylvania for:

99.6.1.2. **Time and Place of BID Opening:** All BIDS must be in the hands of _____, TOWNSHIP MANAGER, TOWNSHIP of Upper St. Clair, 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241 before _____, 20__, and the same will be publicly opened and read thereafter in the Board of Commissioners' Meeting Room, Township Municipal Building, at the same address.

99.6.1.3. **Location and Cost of Documents:** Copies of DRAWINGS, SPECIFICATIONS, Instructions to BIDDERS, Non-Collusion Affidavits, General Conditions, Forms of BIDS and AGREEMENT are on file and open to public inspection at the office of _____ and sets of said documents may be obtained upon payment of _____ Dollars (\$_____) per set. No refund will be made for the return of any documents.

99.6.1.4. **Bonding Requirements:** Performance and Labor and Materials Bonds along with Public Liability and Property Damage Certificates of Insurance in the amounts specifies, as well as Certificate of Workmen's Compensation must be filled with the executed AGREEMENT.

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- 99.6.1.5. **Bid Bond:** BIDS to receive consideration must be accompanied by a Certified Check of BIDDER’S BOND from a SURETY Company authorized to do business in Pennsylvania, made to the order of the TOWNSHIP of Upper St. Clair, in an amount equal to 10% of the total amount of the BID, as a guarantee that if the BID is accepted, the successful BIDDER will enter into an b AGREEMENT after NOTICE OF AWARD of said BID.

- 99.6.1.6. **Non-Collusion Affidavits:** BIDS to receive consideration must be accompanied by an executed Non-Collusion Affidavit in the form provided by the TOWNSHIP of Upper St. Clair.

- 99.6.1.7. **Delivery of BIDS:** The BID must be delivered in sealed envelopes to _____, TOWNSHIP MANAGER, at the above address, and shall be clearly marked: “BID for _____.”

- 99.6.1.8. **Term of BID:** All BIDS must be made to the TOWNSHIP of Upper St. Clair, Allegheny County, Pennsylvania, and shall remain firm for a period of _____ DAYS. No BIDDER may withdraw his BID during the _____ DAY period without forfeiting his **BID** guarantee.

- 99.6.1.9. **Term of Informalities:** The TOWNSHIP reserves the right to reject any or all BIDS, or any part thereof, for any reason and also reserves the right to waive any informality therein.

- 99.6.1.10. **Dates of Publication:** _____
 _____ TOWNSHIP MANAGER
 TOWNSHIP of Upper St. Clair

- 99.6.1.11. **Pre-Qualification:** Any CONTRACT must follow the TOWNSHIP’S pre-qualification program.

99.6.2. Form of Scope of Work and Project Specifications and Addendum Form

C:_____

99.6.2. **Scope of Work and Project Specifications**

This portion of the **CONTRACT** will be supplied by the **ENGINEER**.

99.6.2.1. **Project Specifications**

99.6.2.1.1. **Scope of Work**

99.6.2.1.1.1. **General:**

99.6.2.1.1.2. **Description:**

99.6.2.1.1.3. **WORK Not Included:**

99.6.2.2. **Specific Conditions**

99.6.2.2.1. **General:**

99.6.2.3. **Construction Details:**

99.6.2.3.1. **General:**

99.6.2.4. **Materials:**

99.6.2.4.1. **General:**

99.6.2.4.2.

99.6.2.5. **Basis of Payment**

(Reference to Proposal Items)

_____, 20____

OF
ALLEGHENY COUNTY, PA

REQUEST FOR PROPOSALS TO BE RECEIVED ON _____, 20____

FOR: _____

ADDENDUM NO. _____

All **CONTRACTORS** who maybe bidding on the **WORK** under this **CONTRACT** shall read and observe this Addendum and any future Addenda.

Every **BIDDER** shall note that while certain requirements in this Addendum may be specifically noted as applying to a particular page and section in the **SPECIFICATIONS** or to a Plan Number, such changes shall apply also to any other Page or Plan where such change is relevant.

All **CONTRACTORS** who are bidding on this **WORK** shall take cognizance of the revisions, changes, additions and deletions shown in this and future Addenda and shall provide for the same in their **BID**. The Addenda shall be attached to the **INSIDE FRONT COVER OF THE BOOK OF SPECIFICATIONS** when submitting their **BID**, Receipt of this Addenda must also be indicated on the Proposal Form.

- 1.
- 2.

ACKNOWLEDGEMENT

The **BIDDER** hereby acknowledges receipt of the foregoing **ADDENDUM NUMBER** _____

(Name of **BIDDER**)

(Signature)

(Date)

(Title of Officer)

SCOPE & SPECIFICATIONS

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99.6.3. Form of Bid

C: _____

99.6.3. **BID**

BID FROM: _____

99.6.3.1.

Address:

To: Township of Upper St. Clair
1820 McLaughlin Run Road
Upper St. Clair, Pennsylvania 15241

99.6.3.2.

PROJECT Description:

PROJECT:

99.6.3.3. **Response to Invitation:** Pursuant to the Notice to BIDDERS Public Advertisement, the undersigned, having examined the DRAWINGS and SPECIFICATIONS for said improvements as on file at the office of _____ and having become familiar with the CONTRACT DOCUMENTS does hereby propose and agree to furnish all materials, tools, and labor required to fully complete the WORK as outlined, in strict accordance with the SPECIFICATIONS and to the satisfaction of the ENGINEER and TOWNSHIP for the sum set forth in the following BID.

99.6.3.4. **Time of Completion:** we hereby agree to complete the WORK in accordance with the provisions of the AGREEMENT within _____ calendar DAYS from the written NOTICE TO PROCEED in accordance with the following bidding schedule:

99.6.3.5. **Bidding Schedule:**

A LUMP PRICE OF:

_____ Dollars & _____ Cents
(in writing)

TOTAL AMOUNT OF BID \$ _____ (in figures)

A UNIT PRICE OF:

_____ Dollars & _____ Cents
(in writing)

TOTAL AMOUNT OF BID \$ _____ (in figures)

99.6.3.6. **BID SURETY:** Accompanying this BID is a certified Check or SURETY company Bond (with the UNIT PRICE Breakdown to the BID attached) in the amount of the BID, in favor of the TOWNSHIP of Upper St. Clair as a BID deposit which, it is understood, will be forfeited in case of failure to comply with the requirements and provisions of this proposal.

99.6.3.7. **To Execute CONTRACT:** the BIDDER agrees to enter into a written AGREEMENT for the performance of the WORK within 10 DAYS after notice of the BID is accepted by the TOWNSHIP of Upper St. Clair.

99.6.3.8. **Acceptance of Terms:** the BIDDER hereby agrees to accept the terms set forth in the Instructions to BIDDERS.

99.6.3.9. **Furnish CONTRACT Bonds:** the BIDDER proposes to furnish a SURETY Company Performance Bond for the full amount of the CONTRACT PRICE and SURETY Company Labor and Material men’s Bond in the full amount of the CONTRACT PRICE.

99.6.3.10. **Examined Site, Etc.:** the BIDDER has examined the site of the proposed PROJECT and determined the difficulties, which may be encountered in the completion of the WORK. The BIDDER has also made his own investigation to determine all underground structures and UTILITY lines.

99.6.3.11. **Non-Collusion Affidavit:** accompanying this BID is a Non-Collusion Affidavit executed by the member, officer or employee of the BIDDER who makes the final decision on prices and the amount quoted in this BID.

99.6.3.12. **Insurance to be Furnished:** the BIDDER proposes to take out and maintain such insurance as shall cover collapse, underground work and explosive hazards. Insurance evidenced by the Certificate shall include protection against public liability arising from products, completed operations, and premise-operations. The amount of and type of insurance shall be at least to the following minimum requirements.

- 99.6.3.12.1. Bodily Injury \$1,000,000 per occurrence
\$2,000,000 aggregate
- 99.6.3.12.2. Property Damage \$1,000,000 per occurrence
\$2,000,000 aggregate
- 99.6.3.12.3. Fire Legal Liability \$100,000 per occurrence
- 99.6.3.12.4. Automobile Liability \$1,000,000 single limit
- 99.6.3.12.5. Employer’s Liability \$100,000 per person
\$500,000 per accident
- 99.6.3.12.6. Pennsylvania Workers’ Compensation Coverage A-Statutory

All insurance shall be maintained and paid for from the time the BID is submitted until the TOWNSHIP deems the PROJECT completed. All insurance must be provided by a company with a rating of “A” from AM Best’s, or the equivalent. All Certificates should include a 10 day notice of cancellation to the certificate holder.

99.6.3.13. **BID BOND Conditions:** if the BID is accepted by the TOWNSHIP of Upper St. Clair and the undersigned, after 10 DAYS notice, fails to execute and AGREEMENT and furnish the required BONDS and insurance, then the TOWNSHIP of Upper St. Clair may, at its option, determine that the undersigned has abandoned all rights in connection herewith and thereupon the BID guarantee shall be forfeited to and become the property of the TOWNSHIP of Upper St. Clair, otherwise the BID deposit will be returned to the BIDDER.

99.6.3.14. **Signature:** the BIDDER is and Individual whose Name is _____

or

The BIDDER is a Partnership whose Partners are: _____

The BIDDER is a Corporation (Give State of Incorporation, Principal Corporate Address and Names of Executive Officers) _____

CONTRACTOR

Title

Witness

Address

Date: _____

Phone No. _____

99.6.4. Form of Non-Collusion Affidavit/Instructions

C: _____

99.6.4. Instructions for Non-Collusion Affidavit

99.6.4.1. This Non-Collusion Affidavit is material to any CONTRACT awarded pursuant to this BID. According to the Pennsylvania Antibid-Rigging Act, 73 PS §§ 1611 et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with BIDS.

99.6.4.2. This Non-Collusion Affidavit must be executed by the member, officer or employee of the BIDDER who makes the final decision on prices and the amount quoted in the BID.

99.6.4.3. BID rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of BIDS are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the BIDDER with responsibilities for the preparation, approval or submission of the BID.

99.6.4.4. In the case of a BID as used in the Affidavit has the meaning commonly associated with that term in the bidding process, and includes the knowing submission of BIDS higher than the BID of another firm, any intentionally high or noncompetitive BID, and any other form of BID submitted for the purpose of giving a false appearance of competition.

99.6.4.5. Failure to file an Affidavit in compliance with these instructions will result on disqualification of the BID.

NON-COLLUSION AFFIDAVIT

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Non-Collusion Affidavit

CONTRACT/BID No. _____

State of _____ :
: SS
County of _____ :

I state that I am _____ of _____
[Title] [Name of my Firm]
and that I am authorized to make this affidavit of behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this **BID**.

I state that:

(1) The price(s) and amount of this **BID** have been arrived at independently and without consultation, communication or **AGREEMENT** with any other **CONTRACTOR, BIDDER** or potential **BIDDER**.

(2) Neither the price(s) nor the amount of this **BID**, and neither the approximate price(s) nor approximate amount of this **BID**, have been disclosed to any other firm or person who is a **BIDDER** or potential **BIDDER**, and they will not be disclosed before **BID** opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this **CONTRACT**, or to submit a **BID** higher than this **BID**, or to submit any intentionally high or non-competitive **BID** or other form of complementary **BID**.

(4) The **BID** of my firm is made in good faith and not pursuant to any **AGREEMENT** or discussion with, or inducement from, any firm or person to submit a complementary or other non-competitive **BID**.

(5) _____, its affiliates, subsidiaries, officers, directors
[Name of Firm]
and employees are not currently under investigation by any governmental agency and have not in the last 3 years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public **CONTRACT**, except as follows:

(It should be noted that the person's statement on this affidavit that he has been convicted or found liable for any act prohibited by federal or state law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last 3 years does not prohibit a government agency from accepting a bid from or awarding a contract to that person, but it may be grounds for administrative suspension or debarment in the discretion of the government agency under the rules and regulations of that agency or may be grounds for consideration on the question of whether the agency should decline to award a contract to that person on the basis of lack of responsibility. 62 Pa. C.S.A. §4507)

NON-COLLUSION AFFIDAVIT

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99.6.5. Form of Instruction to Bidders

C:_____

99.6.5. Instructions to Bidders

99.6.5.1. General:

99.6.5.1. The following instructions are for the information and guidance of BIDDERS and relate to the proper form and method for the submission of BIDS and of the SURETY to accompany the same, and certain information in conformity with which all proposals and BIDS shall be submitted, and provisions relating to the lettering of the CONTRACTS. All information in the Public Advertisement shall be considered as part of the Instructions to BIDDERS.

99.6.5.2. **Definition of Terms:** wherever used in the CONTRACT DOCUMENTS the following words, or pronouns used in their stead, occur, they shall have the meaning here given:

99.6.5.2.1. **AGREEMENT** – the written AGREEMENT between TOWNSHIP and CONTRACTOR covering the WORK to be performed for the PROJECT which sets forth in writing the CONTRACT awarded by acceptance of the **BID**.

99.6.5.2.2. **APPLICATION FOR PAYMENT** – the form furnished by ENGINEER which is to be used by CONTRACTOR in requesting progress payments and which is to include the schedule of values required by Section 99.14.2.7.2. of the General Conditions and an affidavit of CONTRACTOR that progress payments theretofore received on account of the WORK have been applied by CONTRACTOR to discharge in full all of CONTRACTOR'S obligations reflected in prior APPLICATIONS FOR PAYMENT.

INSTRUCTIONS TO BIDDERS

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99.6.5.2.3. **BEST RESPONSIBLE BIDDER**—A RESPONSIBLE BIDDER who, in a competitive bidding situation, submits a BID which, as finally determined by the TOWNSHIP is the best BID available in terms of price, product, and/or service quality, adherence to SPECIFICATIONS, timeliness of delivery, serviceability and maintenance and other factors that the TOWNSHIP may establish. For the purpose of this definition, a RESPONSIBLE BIDDERB is a BIDDER who is considered responsible either through previous experience in business dealings with the TOWNSHIP or through an investigation of the credit, reliability and performance of the BIDDER.

99.6.5.2.4. **BID** – the offer of a BIDDER submitted on the prescribed form setting forth the prices for the WORK to complete the PROJECT.

99.6.5.2.5. **BIDDER** - any individual, firm, or corporation submitting a proposal for the WORK or his representative.

99.6.5.2.6. **BONDS** – BID, performance and payment BONDS and other instruments of security, furnished by the CONTRACTOR and his SURETY in accordance with the CONTRACT DOCUMENTS.

99.6.5.2.7. **CHANGE ORDER** – a written order to the CONTRACTOR signed by the TOWNSHIP authorizing an addition, deletion or revision in the WORK, or an adjustment in the CONTRACT PRICE or the CONTRACT TIME issued after execution of the AGREEMENT.

99.6.5.2.8. **CODE** – shall mean the PUBLIC & PRIVATE IMPROVEMENTS CODE of the TOWNSHIP.

99.6.5.2.9. **CONTRACT DOCUMENTS** – mean and include Notices to BIDDERS by Public Advertisement, Instructions to BIDDER, BID, Non-Collusion Affidavit, Certificates of Insurance, NOTICE OF AWARD, Performance bond, Letter of Credit, labor and Materialmen’s Bonds and any other BONS required, Federal and State Government requirements, if any, AGREEMENT, SPECIFICATIONS (General Conditions, Scope of WORK and PROJECT, and Supplementary Conditions), DRAWINGS, MODIFICATIONS and any Schedules of Minimum Wage Rates.

INSTRUCTIONS TO BIDDERS

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99.6.5.2.10. **CONTRACT PRICE** – means the LUMP SUM PRICE BID for the WORK or the total sum of the amount obtained by multiplying the respective CONTRACT UNIT PRICES by the quantities given on the BID, plus the LUMP SUM UNIT PRICES, if any, payable to the CONTRACTOR under the CONTRACT DOCUMENTS.

99.6.5.2.10.1. **LUMP SUM PRICES** – means the amount bid as a single item for the WORK, ready for use, in which case, LUMP SUM PRICE is synonymous with CONTRACT PRICE.

99.6.5.2.10.2. **UNIT PRICES** – means any price under the respective items of the BID, whether such price be per unit of measurement, per each or per lump sum.

99.6.5.2.11. **CONTRACT TIME** – the number of calendar DAYS stated in the BID for the completion of the WORK.

99.6.5.2.12. **CONTRACTOR** – the person or entity contracting for the execution of the WORK, acting directly or through his agents or employees, or his SURETY in case of default.

99.6.5.2.13. **DAY** – a calendar DAY of 24 hours measured from midnight to the next midnight.

99.6.5.2.14. **DRAWINGS** – the DRAWINGS and/or plans which show the character and scope of the WORK to be performed and which have been prepared or approved by ENGINEER and are referred to in the CONTRACT DOCUMENTS.

99.6.5.2.15. **ENGINEER** – the ENGINEER who is charged with the design and inspection of the WORK, and with determining the quantities of materials and labor to be paid for. During the execution of the WORK the ENGINEER shall also be interpreted to mean his assistant, inspector, or other representative acting within the authority given him. He is to be considered an agent of the TOWNSHIP.

99.6.5.2.16. **FIELD ORDER** – a written order issued by the ENGINEER to (a) clarify or interpret (in the form of DRAWINGS or otherwise) the CONTRACT DOCUMENTS as he may determine necessary for the proper execution of the WORK, such clarifications and interpretations to be consistent with or reasonably inferable from the overall intent of the CONTRACT DOCUMENTS, and to (b) authorize minor changes or alterations in the WORK not involving extra cost and not inconsistent with the overall intent of the CONTRACT DOCUMENTS.

99.6.5.2.17. **FINANCIAL SECURITY** – a letter of credit, or escrow account from a SURETY or a financial institution acceptable to TOWNSHIP, naming TOWNSHIP as obligee in the form specified in Section 3 of the CODE.

99.6.5.2.18. **MODIFICATION** – (a) a written amendment of the CONTRACT DOCUMENTS signed by both parties, (b) a CHANGE ORDER, or (c) a FIELD ORDER. A MODIFICATION may only be issued after execution of the AGREEMENT.

99.6.5.2.19. **NOTICE OF AWARD** – the written notice by TOWNSHIP to the apparent successful BIDDER stating that upon compliance with the conditions precedent to be fulfilled by the BIDDER within the time specified, TOWNSHIP will execute and deliver the AGREEMENT to him.

99.6.5.2.20. **NOTICE OF COMMENCEMENT** – a written notice in the form set forth in Section 3 of the CODE given by the CONTRACTOR to TOWNSHIP not less than 2 DAYS prior to start of WORK.

99.6.5.2.21. **NOTICE TO PROCEED** – a written notice given by ENGINEER to CONTRACTOR fixing the date on which the CONTRACT TIME will commence to run and on which CONTRACTOR shall start to perform his obligations under the CONTRACT DOCUMENTS.

99.6.5.2.22. **PROJECT** – the entire construction to be performed as provided in the CONTRACT DOCUMENTS.

99.6.5.2.23. **SHOP DRAWINGS** – all DRAWINGS, diagrams, illustrations, brochures, schedules and other data which are prepared by CONTRACTOR, a SUBCONTRACTOR, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the WORK.

INSTRUCTIONS TO BIDDERS

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99.6.5.2.24. **SPECIFICATIONS** – those portions of the CONTRACT DOCUMENTS consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the WORK.

99.6.5.2.25. **SUBCONTRACTOR** – an individual, firm, or corporation having a direct CONTRACT with the CONTRACTOR or with any other SUBCONTRACTOR for supplying labor and materials, or labor only, for part of the WORK.

99.6.5.2.26. **SUBSTANTIAL COMPLETION** – the date as certified by ENGINEER when the construction of the PROJECT or a specified part, thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it was intended; or if there be no certification, the date when final payment is due in accordance with Section 14.14 of the General Conditions.

99.6.5.2.27. **SURETY** – the corporate body, licensed in Pennsylvania, which is bound with and for the CONTRACTOR for the satisfactory completion and performance of the WORK by him and the prompt payment in full for labor and material as provided in the BONDS.

99.6.5.2.28. **WORK** – any and all obligations, duties and responsibilities necessary to the successful completion of the PROJECT assigned to or undertaken by the CONTRACTOR under the CONTRACT DOCUMENTS, including the furnishing of all labor, materials, equipment and other incidentals.

99.6.5.3. **Copies of Bidding Documents**

99.6.5.3.1. Copies of the CONTRACT DOCUMENTS are on file and open to the public for inspection at the location stated in the Notice to BIDDERS by Advertisement (the “ADVERTISEMENT”) and may be obtained as set forth in the ADVERTISEMENT.

99.6.5.4. **Examination of CONTRACT DOCUMENTS and Site**

99.6.5.4.1. The BIDDER shall examine all CONTRACT DOCUMENTS before submission of BIDS.

99.6.5.4.2. If, before submission of BIDS, a BIDDER shall find any discrepancy, omission, contradiction, or ambiguity in the CONTRACT DOCUMENTS, or a provision which is in conflict with a law or ordinance of TOWNSHIP of Upper Sr. Clair or other local authority, he shall at once notify the ENGINEER. If the CONTRACT DOCUMENTS are in error or require correction or classification, an official supplement to the CONTRACT DOCUMENTS will be issued, copies of which will be sent to all prospective BIDDERS. Such supplements shall be signed by the BIDDER and submitted with the BID.

99.6.5.4.3. Prospective BIDDERS shall examine the location of the proposed PROJECT and determine the difficulties which may be encountered in the completion of the WORK. No claims for additional compensation will be allowed because of obstructions or conditions on the location of the PROJECT which may add to the difficulties or costs of construction, even though such obstructions or conditions are not shown on the DRAWINGS and SPECIFICATIONS.

99.6.5.4.4. The BIDDER shall make an investigation to determine all underground structures and UTILITY lines, as much of the information on the DRAWINGS and SPECIFICATIONS may have been obtained from records and is subject to error.

99.6.5.4.5. Where feasible, the ENGINEER will have placed the basic survey lines on the site of the PROJECT prior to the receiving of proposals.

99.6.5.5. **Interpretation of or Addenda to CONTRACT DOCUMENTS**

99.6.5.5.1. During the bidding period, BIDDERS may be furnished with addenda or bulletins with regard to additions or alterations of the DRAWINGS and/or SPECIFICATIONS. Such additions shall be in writing, signed by the ENGINEER, and shall become a part of the CONTRACT DOCUMENTS. No oral interpretations will be made to any BIDDER as to the meaning of the CONTRACT DOCUMENTS. Requests for such interpretations shall be made in writing to the ENGINEER in triplicate, and signed by the executive officer of the company bidding or by an individual BIDDER. Replies to the request shall be issued as official bulletins, and will be mailed to all purchasers of the CONTRACT DOCUMENTS.

99.6.5.5.2. It shall always be the responsibility of the BIDDER to make inquiry as to the number of addenda issued. All BIDDERS shall be bound by such addenda, whether received or not by the BIDDER.

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99.6.5.6. BID Security

99.6.5.6.1. Each BIDDER is required to file with his BID a BIDDERS BOND or Certified Check in the amount specified in the Notice to BIDDERS by ADVERTISEMENT to indemnify the TOWNSHIP against loss, should the BIDDER fail to execute an AGREEMENT as required by law, with proper SURETY, within a reasonable time (as may be stated in the ADVERTISEMENT) after written notice by the TOWNSHIP to the CONTRACTOR that the PROJECT has been awarded to him and that the CONTRACT DOCUMENTS are ready for execution.

99.6.5.6.2. The BIDDERS' BONDS and Certified Checks of all unsuccessful BIDDERS will be returned after the BIDS have been tabulated and the PROJECT awarded.

99.6.5.7. Date of Starting and Completion

99.6.5.7.1. **Written NOTICE TO PROCEED** – should the CONTRACTOR fail to commence work within the time specified in the AGREEMENT, the ENGINEER may give written notice to the CONTRACTOR to begin WORK within 10 DAYS. Should the CONTRACTOR fail to commence within the 10 DAYS, the CONTRACTOR shall be considered in default and the TOWNSHIP may proceed with any remedy set forth in the CONTRACT DOCUMENTS or any remedy available at law or in equity.

99.6.5.7.2. The time at which WORK shall commence on the PROJECT is set forth in the AGREEMENT. In arriving at the time to be named for completion, the BIDDER shall take into account all weather, climactic or other conditions or method of execution of the WORK. No extension of time shall be claimed by reason of his failure to anticipate these conditions. The CONTRACTOR shall supply the proper labor, materials, tools, and equipment in sufficient quantities to complete the WORK within the time specified, taking into consideration the difficulties and conditions to be encountered.

99.6.5.8. Liquidated Damages

99.6.5.8.1. Should the BIDDER fail to execute and AGREEMENT as required by law, with proper SURETY, within a reasonable time, but no later than sixty (60) days after the date on which the contract was awarded, (as may be stated in the ADVERTISEMENT) after written notice by the TOWNSHIP to the CONTRACTOR that the PROJECT has been awarded to him and that the CONTRACT DOCUMENTS are ready for execution, TOWNSHIP is entitled to liquidated damages in the amount of the BIDDER'S BOND or Certified Check in the amount specified in the Notice to BIDDERS by ADVERTISEMENT.

99.6.5.9. Notice Prior to Start of WORK

99.6.5.9.1. The CONTRACTOR shall file with TOWNSHIP a NOTICE OF COMMENCEMENT not less than 2 DAYS prior to start of WORK and shall also submit the following:

99.6.5.9.1.1. Names, addresses and telephone numbers of the resident superintendent, CONTRACTOR and SUBCONTRACTORS and other responsible persons to be contacted in case of emergencies;

99.6.5.9.1.2. A detailed schedule of construction which is to be updated during construction if changes are made; and

99.6.5.9.1.3. A list of supplies

99.6.5.9.2. Should the CONTRACTOR fail to file the NOTICE OF COMMENCEMENT and other information required by this Section, the TOWNSHIP MANAGER or his designated representative may issue a stop WORK order pursuant to Section 1.10 of the CODE and Section 99.6.14.13.5 of the General Conditions.

99.6.5.10. Substitute Materials and Equipment

99.6.5.10.1. If TOWNSHIP or ENGINEER specifies materials, products, or equipment by name of manufacturers, brand, trade name, or catalog reference under the AGREEMENT unless changed by mutual AGREEMENT of the TOWNSHIP and CONTRACTOR. Where two (2) or more materials are named, the choice of these shall be optional with the

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CONTRACTOR. Should the CONTRACTOR wish to use any materials, products or equipment, other than those specified, he shall so state in his BID, naming the proposed substitutions and indicating what difference, if any, will be made in the CONTRACT PRICE for such substitution, should it be accepted. Such substitution shall require written approval of the ENGINEER.

99.6.5.11. **SUBCONTRACTORS**

99.6.5.11.1. CONTRACTOR shall not employ any SUBCONTRACTOR or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, unless they have been pre-qualified by the TOWNSHIP. A SUBCONTRACTOR or other person or organization identified in writing to TOWNSHIP and ENGINEER by CONTRACTOR prior to the NOTICE OF AWARD and not objected in writing by TOWNSHIP or ENGINEER prior to the NOTICE OF AWARD will be deemed acceptable to TOWNSHIP and ENGINEER. Acceptance of any SUBCONTRACTOR, other person or organization by TOWNSHIP or ENGINEER shall not constitute a waiver of any right of TOWNSHIP or ENGINEER to reject defective WORK or WORK not in conformance with the CONTRACT DOCUMENTS. If TOWNSHIP or ENGINEER, after due investigation, has reasonable objection to any SUBCONTRACTOR other person or organization proposed by CONTRACTOR after the NOTICE OF AWARD, CONTRACTOR shall submit an acceptable substitute and the CONTRACT PRICE shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate CHANGE ORDER shall be issued. CONTRACTOR shall not be required to employ and SUBCONTRACTOR other person or organization against whom he has reasonable objection. CONTRACTOR shall not, without the consent of TOWNSHIP and ENGINEER, make any substitution for any CONTRACTOR other person or organization who has been accepted by TOWNSHIP and ENGINEER unless ENGINEER determines that there is good cause for doing so.

99.6.5.11.2. CONTRACTOR agrees to bind specifically every SUBCONTRACTOR to the applicable terms and conditions of the CONTRACT DOCUMENTS for the benefit of TOWNSHIP.

99.6.5.12. BID Forms

99.6.5.12.1. The BIDDER shall make his BID on the blank form of BID provided for that purpose and the BID shall be in typing or ink. He shall state the price of each item of WORK proposed and called for on the form. The blank spaces in the BID form shall be filled in correctly, in words and numerals, where indicated. In case of discrepancy, the written words shall be considered as being the BID price.

99.6.5.12.2. The BIDDER shall give his name, business address, and form of business organization, and the names and addresses of all persons interested with him in the BID, and all other information called for. In the case of a corporation, the state of its incorporation and the names of its executive officers shall be given.

99.6.5.12.3. The BID forms must not be separated from the CONTRACT DOCUMENTS.

99.6.5.13. Submission of BID

99.6.5.13.1. The BID must be delivered in a sealed envelope to the address stated in the Notice to BIDDERS by ADVERTISEMENT before the time stated in the ADVERTISEMENT, and shall be clearly marked "BID".

99.6.5.14. Withdrawal of BIDS

99.6.5.14.1. In case a CONTRACT for which BIDS are received is not awarded within the time specified after the opening of BIDS, and BIDDER shall have the right to withdraw his BID upon written application to the TOWNSHIP.

99.6.5.15. Receiving and Opening of BIDS

99.6.5.15.1. Separate, sealed BIDS, together with the required SURETY, will be received by the TOWNSHIP until the date and hour stated in the ADVERTISEMENT, and shall be publicly opened and read at the time announced.

99.6.5.16. BIDS to Remain Open

99.6.5.16.1. All BIDS shall remain firm for a period of _____. No BIDDER may withdraw his BID during the _____ period without forfeiting his BID guarantee.

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99.6.5.17. Supplemental UNIT PRICES

99.6.5.17.1. On a Lump Sum proposal or a partial Lump Sum proposal, if the BID includes a supplementary schedule of UNIT PRICES for fixing cost basis for changes, the TOWNSHIP reserves the right to reject any or all such supplemental UNIT PRICES which it deems to be excessive or unreasonable.

99.6.5.18. Lump Sum CONTRACTS

99.6.5.18.1. Where BIDS are received on the basis of a Lump Sum value, the selected BIDDER shall submit an itemized schedule of values as the basis of payment for monthly payments from the TOWNSHIP. Said schedule shall be submitted to the ENGINEER for review and approval before execution of the AGREEMENT. Copies of the schedule shall be part of the CONTRACT DOCUMENTS.

99.6.5.19. Award of CONTRACT

99.6.5.19.1. The effective amount of each BID (other than Lump Sum BIDS) will be determined on the basis of the approximate quantities given on the BID Form. By setting up approximate quantities on the BID Form, there is no AGREEMENT, expressed or implied, that the actual amount of WORK or materials to be required under the CONTRACT DOCUMENTS correspond with such quantities, but the right is reserved at any time after the award of a CONTRACT to increase or decrease any or all of the items or to eliminate entirely any item or items or parts of items, or part or parts of the PROJECT.

99.6.19.2. An award of a CONTRACT in accordance with the CONTRACT DOCUMENTS will be made to the BEST RESPONSIBLE BIDDER subject to Section 99.6.5.21 below.

99.6.5.19.3. Where estimated quantities are not listed, BIDDERS are required to submit their calculated estimate of the quantities involved. A comparison with the ENGINEER'S official estimate shall be used as the basis in determining the correctness of the submitted BID.

99.6.5.20. Rejection of BIDS

99.6.5.20.1. The TOWNSHIP reserves the right to reject any or all BIDS, and the right to abandon any item or items, and the right to waive any informality in the BID, if, in its judgment, its best interests require such action.

99.6.5.20.2. BIDS which reflect an unbalanced CONTRACT PRICE when UNIT PRICE extensions are made may be rejected for the reason alone.

99.6.5.21. CONTRACTOR to be Satisfactory (Most Responsible BIDDER)

99.6.5.21.1. The AGREEMENT will not be awarded to any BIDDER who has failed in any of his previous contractual obligations to the TOWNSHIP.

99.6.5.21.2. The TOWNSHIP reserves the right to disqualify any BIDDER who does not usually perform WORK contracted for with his own WORK forces.

99.6.5.21.3. The TOWNSHIP reserves the right to disqualify any BIDDER on the basis of a lack of responsibility, as determined from the Non-Collusion Affidavit.

99.6.21.4. BIDDERS may be required to submit quadruplicate sworn statements of their financial responsibility, technical qualifications and performance record before CONTRACTS can be awarded to them. In order that there may be no delay on the making of awards, BIDDERS shall be prepared to submit such statements immediately after the BID opening.

99.6.5.22. Performance and Other BONDS

99.6.5.22.1. A BIDDER to whom the WORK is awarded will be required to enter into a written AGREEMENT for the performance of the WORK, and to deliver a BOND with SURETY in an amount not less than 100% (unless otherwise specified) of the CONTRACT PRICE, conditioned for the faithful performance of the AGREEMENT in accordance with all the terms and provisions thereof. He shall also furnish a separate Labor and Material Bond with SURETY in the same amount, and such other BONDS, each with SURETY, as may be specified.

99.6.5.23. Signing of the AGREEMENT

99.6.5.23.1. The successful BIDDER will be required to execute the AGREEMENT, post BONDS and deliver the specifies Certificates of Insurance to the TOWNSHIP with in ten (10) DAYS (or other specified time) after TOWNSHIP has posted the AGREEMENT. In case the BIDDER shall fail to do so, he will be deemed to have abandoned the AGREEMENT and the TOWNSHIP may thereupon re-advertise or otherwise award the AGREEMENT and recover the losses sustained by such abandonment out of the BIDDER'S SURETY or Certified Check.

99.6.5.24. Minimum Wage Rates

99.6.5.24.1. The minimum wage rates for each craft or classification of all workmen needed to perform the WORK during the anticipated term hereof shall be governed by the "Pennsylvania Minimum Wage Act of 1968" (Act No. 11) as amended and the regulations issued pursuant thereto. The CONTRACTOR'S attention is directed to this statute so that the applicable provisions of this Act shall be strictly adhered to in the WORK. Failure to adhere to the applicable provisions of this Act shall be sufficient grounds for the TOWNSHIP to declare the AGREEMENT in default or to determine the AGREEMENT.

99.6.5.24.2. In the event that other State or Federal minimum wage rates supersede the aforementioned Act, the CONTRACT shall adhere to the provisions thereof.

99.6.5.25. FINANCIAL SECURITY

99.6.5.25.1. Upon completion of the WORK and prior to the final payment, a Maintenance Bond shall be furnished by the CONTRACT to the TOWNSHIP as a guarantee against defective workmanship and materials.

99.6.5.25.2. The FINANCIAL SECURITY shall be in an amount equal to fifty percent (50%) of the Final CONTRACT Value and shall be valid for a period of 2 years, in accordance with Section 99.7.15.1.2 of the AGREEMENT.

99.6.5.26. Pennsylvania Human Relations Act

99.6.5.26.1. The CONTRACTOR agrees, in accordance with Section 99.7.10. of the AGREEMENT, that he will comply with the provisions of the Pennsylvania Human Relations Act in providing employment opportunities in connection with all WORK performed by him on the PROJECT pursuant to the AGREEMENT. The CONTRACTOR therefore agrees that:

99.6.5.26.1.1. The CONTRACTOR will not discriminate nor permit discrimination by his agents, servants, or employees against any employee or applicant for employment, with regard to hiring, tenure of employment, promotion, terms, conditions, or privileges of employment on the PROJECT covered by the AGREEMENT because of race, color, religion, age, sex, or national origin and will take such affirmative action as is hereinafter set forth to prevent same.

99.6.5.26.1.2. The CONTRACTOR will, in all publications or ADVERTISEMENTS for employees to WORK on the PROJECT covered by the AGREEMENT, placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, age or national origin. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other CONTRACT or understanding, a notice to be provided by the Pennsylvania Human Relations Commission, advising the said Labor Union or worker's representative of the CONTRACTOR'S commitments under this Section, and shall post copies of the notice in conspicuous places available to his employees and applicants for employment.

99.6.5.26.1.3. The CONTRACTOR shall supply the contracting agency of the State with a periodic report, called a "Compliance Report", relating to the WORK performed on the PROJECT under the AGREEMENT as may be required by the Pennsylvania Human Relations Commission. The Commission shall at all times have access to the employment records of said CONTRACTOR for purposes of investigation to ascertain compliance with the rules, regulations, and orders of the Pennsylvania Human Relations Commission relating to discrimination.

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The CONTRACTOR shall insert the provisions of Subsections 99.6.5.26.1.1., 99.6.5.26.1.2., and 99.6.5.26.1.3. of this Section in all subcontractors which are entered into be the CONTRACTOR under the AGREEMENT requiring WORK to be done on the PROJECT, as covenants to be binding upon such SUBCONTRACTORS

99.6.5.26.1.4. Compliance by the CONTRACTOR with Subsections 99.6.5.26.1.1, 99.6.5.26.1.2 and 99.6.5.26.1.3 of this Section shall discharge the CONTRACTOR from any liability hereunder, relating to the nondiscriminatory provisions of the CONTRACT DOCUMENTS.

99.6.4.27. **Insurance**

99.6.4.27.1. The successful BIDDER shall furnish Certificates of Insurance PRIOR to the time the AGREEMENT is executed for the following coverages, and any other insurance as may be specified:

99.6.4.27.1.1. TOWNSHIP'S Protective Public Liability and Property Damage Insurance: The CONTRACTOR shall indemnify the TOWNSHIP against all liability for all claims for injury or damages to persons, including wrongful death, and to property, which may arise from operations under the AGREEMENT whether such operations be by himself or any SUBCONTRACTOR or anyone directly or indirectly employed by either of them, during the period from the date of commencement of the WORK until the completion of the AGREEMENT. The policy for Property Damage Insurance shall cover the Explosion and Building Collapse Hazard.

99.6.5.27.1.2. **Workmen's Compensation Insurance** – the CONTRACTOR shall take out and maintain during the life of the AGREEMENT, Workmen's Compensation Insurance for his employees at the site of the PROJECT. In the event any WORK is sublet, the CONTRACTOR shall require the SUBCONTRACTOR to provide similar insurance for his employees, unless his employees are covered by protection afforded by the CONTRACTOR.

99.6.5.27.1.3. **CONTRACTOR'S Public Liability and Property Damage Insurance**: the CONTRACTOR shall take out and maintain during the life of the AGREEMENT, Public Liability

insurance and Property damage Insurance in the amounts specified on the BID to protect him or any SUBCONTRACTOR for claims for damages for personal injury, including wrongful death, as well as claims for property damages which may arise from operations under the AGREEMENT, whether such operations be by himself or a SUBCONTRACTOR or anyone directly or indirectly employed by either of them. This policy shall include coverage of the Explosion and Building Collapse hazard. The Certificate of Insurance furnished shall state that these hazards are included, and also shall state that there is no deductible clause included.

99.6.5.27.2. Certificates of Insurance furnished in accordance with the requirements hereunder shall contain the following information:

- 99.6.5.27.2.1. Date of issuance of policy
- 99.6.5.27.2.2. Amount of coverage provided
- 99.6.5.27.2.3. Nature of coverage, including special hazards
- 99.6.5.27.2.4. Name of insurance company
- 99.6.5.27.2.5. Terms of the policy
- 99.6.5.27.2.6. Expiration date
- 99.6.5.27.2.7. Number of policy

99.6.5.27.3. The policies shall contain a valid endorsement providing that the insurance company will inform the TOWNSHIP and the CONTRACTOR in writing by registered mail fifteen (15) DAYS prior to the termination of the policy and prior to any alteration made when said alteration or change restricts or reduces the coverage provided or changes the name of the insured. The certificates shall show that the policies contain the above endorsement.

99.6.5.27.4. **Insurance Covering Special Hazards**

99.6.5.27.4.1. The following special hazards shall be covered by rider, or riders, to the Public Liability and/or Property Damage Insurance Policy or Policies herein elsewhere required to be furnished by the CONTRACTOR or by separate policies of insurance in same amount as follows:

- 99.6.5.27.4.1.1. Automobile, truck, or other vehicular types (used by the CONTRACTOR on the site of the WORK)
- 99.6.5.27.4.1.2. Blasting

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99.6.5.27.5. No request for approval of any SUBCONTRACTOR will be entertained or given consideration by the TOWNSHIP unless the CONTRACTOR shall submit to the ENGINEER with his request for the approval of such SUBCONTRACTOR, certificates showing that riders have been added to his own policies or to the policies of the proposed SUBCONTRACTOR, or that policies have been taken out by the proposed SUBCONTRACTOR, which riders or policies provide for full coverage of the SUBCONTRACTOR, in the amounts specified in the Supplemental Instructions to BIDDERS' for CONTRACTOR'S public liability and property damage insurance. In addition, the certificates shall also state the name of the SUBCONTRACTOR to be covered.

99.6.5.28. **Fictitious Name Registration**

99.6.5.28.1. Where the AGREEMENT is entered into by an individual person or group of people doing business under a fictitious name, there shall be provided evidence from the Department of the State of the Commonwealth showing that such fictitious name is duly registered under the Fictitious Names Act of the Commonwealth of Pennsylvania. 54 PA. CSA § 301, et seq.

99.6.5.29. **Non-Collusion Affidavit**

99.6.5.29.1. BIDS to receive consideration must be accompanied by an executed Non-Collusion Affidavit in the form provided by TOWNSHIP.

99.6.5.30. **Prevailing Wage**

99.6.5.30.1. The Prevailing Wage Act 43 P.S. 165-1, et seq., governs the Project. The prevailing minimum wage, as determined by the Secretary of Labor, must be paid to workers on all public projects.

99.6.5.31. **Steel Products**

99.6.5.31.1. Any steel products used or supplied in the performance of the contract or any subcontracts thereunder shall be from steel made in the United States. (Steel Products Procurement Act, 73 P.S. § 1881, et seq)

99.6.6. Form of Notice of Award

C: _____

99.6.6. **Notice of Award**

C- _____, 20__

To: _____

(BIDDER)

CONTRACT FOR _____

You are hereby notified that your **BID** dated _____, 20__ for the above **CONTRACT** has been considered. You are the apparent successful **BIDDER** and have been awarded a **CONTRACT**.

The **CONTRACT PRICE** of your **CONTRACT** is _____ Dollars (\$_____).

Three (3) copies of each of the proposed **CONTRACT DOCUMENTS** (except **DRAWINGS**) accompany this **NOTICE OF AWARD**. Three sets of **DRAWINGS** will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen (15) **DAYS** of the date of this **NOTICE OF AWARDS**, that is by _____, 20__.

1. You must deliver to the _____ three (3) fully executed counterparts of the **AGREEMENT** including all the **CONTRACT DOCUMENTS**. This includes the triplicate sets of **DRAWINGS**. Each of the **CONTRACT DOCUMENTS** must bear your signature on the (cover) (every) page.
2. You must deliver with the executed **AGREEMENT** the **CONTRACT** Security (**BONDS**) as specified in the Instructions to **BIDDERS** (Section 99.5.22.) and General Conditions (Section 14.2.)
3. You must deliver prior to the time the **AGREEMENT** Certificates of Insurance as specified in the Instructions to **BIDDERS** (section 5.27.).

(List other conditions precedent)

Failure to comply with these condition within the time specified will entitle _____ to consider your **BID** abandoned, to annul this **NOTICE OF AWARD** an to declare your **BID SECURITY** forfeited.

Within ten (10) **DAYS** after you comply with those conditions, the **TOWNSHIP** will return to you one fully signed counterpart of the **AGREEMENT** with the **CONTRACT DOCUMENTS** attached.

By: _____
(Authorized Signature)

Title

Copy to:

3.7. Form of Contract

C: _____

99.6.7. **AGREEMENT**

99.6.7.1. **Preamble, Parties and WORK Description**

This **AGREEMENT** made and entered into this _____ day of _____ 20__

BY AND BETWEEN

TOWNSHIP of Upper St. Clair, a home rule municipality of Allegheny County, Pennsylvania (hereinafter called the “**TOWNSHIP**”),

AND

(hereinafter called the **CONTRACTOR**).

WHEREAS, after due **ADVERTISEMENT** for **BIDS** , the **CONTRACTOR** was determined to be the lowest **RESPONSIBLE BIDDER** for furnishing all materials, labor, equipment, supervision and insurance for _____

_____; and

WHEREAS, the **CONTRACT** for the **PROJECT** has been awarded to the **CONTRACTOR** upon its **BID**.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and intending to be legally bound, **TOWNSHIP** and **CONTRACTOR** agree as follows:

99.6.7.2. **Definition of Terms; CONTRACT DOCUMENTS (Schedule)**

This **AGREEMENT** incorporates by reference all of the definitions of terms as set forth in the **Instruction to BIDDERS**.

This **AGREEMENT** is part of the **CONTRACT DOCUMENTS** as defined therein and all of the **CONTRACT DOCUMENTS**, listed as follows, are incorporated herein by reference, with copies attached hereto:

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- 99.6.7.2.1. ADVERTISEMENT
- 99.6.7.2.2. Instructions to BIDDERS
- 99.6.7.2.3. CONTRACTOR’S BID
- 99.6.7.2.4. CONTRACT BONDS
- 99.6.7.2.5. Non-Collusion Affidavit
- 99.6.7.2.6. Certificates of Insurance
- 99.6.7.2.7. SPECIFICATIONS, consisting of:
 General Conditions
 Scope of WORK and PROJECT SPECIFICATIONS
 Supplementary Conditions

The following CONTRACT DOCUMENTS, copies of which are not attached hereto, are incorporated herein by reference when such documents are applicable to the PROJECT above described:

- 99.6.7.2.8. DRAWINGS and SPECIFICATIONS and addenda thereto;
- 99.6.7.2.9. Any MODIFICATIONS, including CHANGE ORDERS duly delivered after execution of this AGREEMENT;
- 99.6.7.2.10. NOTICE OF AWARD
- 99.6.7.2.11. NOTICE TO PROCEED

99.6.7.3. **ENGINEER**

99.6.7.3.1. ENGINEER will be TOWNSHIP’S representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as TOWNSHIP’S representative during construction are set forth in the General Conditions and shall not be extended without written consent of TOWNSHIP and ENGINEER.

99.6.7.4. **CONTRACT Time**

CONTRACTOR agrees that the WORK shall be commenced on or before the _____ day of _____, 20____, and shall be proceeded upon so as to complete the same in accordance with the CONTRACT DOCUMENTS on or before the _____ day of _____, 20____.

99.6.7.5. **CONTRACT PRICE; CONTRACTOR’S Warranties and Acceptance**

CONTRACTOR, having examined the location and scope of the PROJECT and read the SPECIFICATIONS therefore, hereby agrees to perform the WORK for construction of the PROJECT in accordance with the

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AGREEMENT and the CONTRACT DOCUMENTS for the consideration stated in the BID of the CONTRACTOR, the UNIT PRICE for the WORK being itemized in the BID. In the case of a Lump Sum BID the CONTRACT PRICE of the _____ Dollars (\$ _____) will be paid by the TOWNSHIP to the CONTRACTOR.

CONTRACTOR covenants and agrees that the ENGINEER'S estimate of quantities required for the PROJECT is sufficiently accurate to determine the prices as aforesaid at which the CONTRACTOR agrees to do the WORK required by and in accordance with this AGREEMENT; that he shall not and will not, at any time, dispute that there was any mistake or misunderstanding in regard to the ENGINEER'S estimates; that the WORK will be completed to the satisfaction of the ENGINEER and in compliance with the DRAWINGS and SPECIFICATIONS; that he will not ask nor demand any extra compensation beyond the amounts payable for the WORK actually performed at the price fixed and agreed upon. The CONTRACTOR further agrees that the TOWNSHIP shall be and is hereby authorized to appoint ENGINEER to inspect the material furnished, to superintend the WORK and to see that the WORK complies with the DRAWINGS and/or SPECIFICATIONS.

99.6.7.6. Notice Prior to Start of WORK:

In order that TOWNSHIP may provide proper inspection and emergency services during construction, CONTRACTOR shall file with the TOWNSHIP a NOTICE OF COMMENCEMENT in form set forth in Section 99.14.2.4 of the General Conditions not less than two (2) DAYS prior to the start of WORK and shall also submit the following:

99.6.7.6.1. Names, addresses and telephone numbers of the resident superintendent, CONTRACT and SUBCONTRACTOR and other responsible persons to be contacted in case of emergencies;

99.6.7.6.2. A detailed schedule of construction which is to be updated during construction if changes are made; and

99.6.7.6.3. A list of suppliers.

99.6.7.7. PUBLIC IMPROVEMENT CODE:

99.6.7.7.1. **CONTRACTOR** agrees that all construction shall be conducted in accordance with Section 99.14.6 of the General Conditions, including, but not limited to, those provisions regarding Supervision and Superintendence, Site Appearance, Dirt Control, and Parking; Hours of Construction, and Responsibility for Compliance.

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99.6.7.8. **Payment Procedure:**

Upon CONTRACTOR'S compliance with the procedure for payment set forth in the General Conditions, Progress Payment will be made to the CONTRACTOR by the TOWNSHIP at intervals of once each month on estimates approved by the ENGINEER as follows:

99.6.7.8.1. Payment schedule will be:

99.6.7.8.1.1. Ninety percent (90%) of such estimated value of all acceptable WORK done and of all acceptable materials incorporated in the WORK and paid for by the CONTRACTOR. Upon completion of fifty percent (50%) of the work, ninety-five (95%) of such estimated value of all acceptable work done and of all acceptable materials incorporated in the work and paid for by the contractor.

99.6.7.8.1.2. On Lump Sum CONTRACTS, fifty percent (50%) of material and equipment not incorporated in the WORK but delivered and suitably stored, less in each case the aggregate of payments previously made.

99.6.7.8.1.3. Upon SUBSTANTIAL COMPLETION, a sum sufficient to increase the total payments to the CONTRACTOR to one hundred percent (100%) of the CONTRACT PRICE less retainage as the ENGINEER shall determine for all incomplete WORK and unsettled claims.

99.6.7.8.1.4. Upon final completion of the WORK and settlement of all claims, the remainder of the CONTRACT PRICE.

99.6.7.8.2. Current estimate will be calculated on the tenth (10th) DAY of each calendar month and payment of current estimates will be made not later than the tenth (10th) DAY of the month following the month in which the WORK was performed, provided these are not delayed by the CONTRACTOR.

99.6.7.8.3. The CONTRACTOR agrees that the quantities on which a current estimate is based are approximate only and subject to revision and that allowance of such an estimate does not imply any acceptance by the TOWNSHIP.

99.6.7.8.4. The current estimates herein provided for are merely partial estimates and subject to correction in the final payment.

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The CONTRACTOR shall furnish the ENGINEER satisfactory evidence of its disbursements to SUBCONTRACTORS.

All payments herein contemplated for WORK due and materials furnished shall be made in accordance with the terms of this AGREEMENT, said CONTRACTOR'S BID or proposal and returns of the ENGINEER.

99.6.7.9. **CONTRACTOR'S Representations**

99.6.7.9.1. CONTRACTOR represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the CONTRACT DOCUMENTS, WORK, locality and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the WORK, and represents that he has correlated his study and observations with the requirements of the CONTRACT DOCUMENTS. CONTRACTOR also represents that he has studied all surveys and investigation reports of surfaced and latent physical conditions referred to in the General Conditions of the SPECIFICATIONS and made such additional surveys and investigations as he deems necessary for the performance of the WORK at the CONTRACT PRICE in accordance with the requirements of the CONTRACT DOCUMENTS and that he has correlated the results of all such data with the requirements of the CONTRACT DOCUMENTS. All such data or information referred to in the SPECIFICATIONS and/or provided by the TOWNSHIP or ENGINEER are being provided or made available for informational purposes only and the TOWNSHIP makes no representation, warranty, nor guarantee, whether expressly or by implication, that the materials or conditions indicated by such information or data are representative of those existing throughout the project. Instead, bidders shall form their own opinions and conclusions from the data available and from such other information they deem necessary to obtain.

99.6.7.10. **CONTRACTOR'S Employees**—CONTRACTOR hereby agrees in accordance with Section 99.5.26. of the Instructions to BIDDERS:

99.6.7.10.1. That in the hiring of employees for the performance of WORK under this AGREEMENT, or any subcontract hereunder, neither the CONTRACTOR nor any SUBCONTRACTOR, shall, by reason of race, color, creed, religion, age, sex, national origin, or disability, discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the WORK to which the employment relates; and [Amended 6-1-92 by Ord. No. 1541]

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99.6.7.10.2. That neither CONTRACTOR, not any SUBCONTRACTOR, nor any person acting on their behalf, shall in any manner discriminate against or intimidate any employee hired for the performance of WORK under this AGREEMENT on account of race, color, religion, age, sex, national origin, or disability; and [Amended 6-1-92 by Ord. No. 1541]

99.6.7.10.3. That there may be deducted form the amount payable to the CONTRACTOR under this AGREEMENT, a penalty of Five Dollars (\$5.00) for each person for each calendar DAY during which such person was discriminated against or intimidates, in violation of the provision of their portion of this AGREEMENT; and

99.6.7.10.4. That this AGREEMENT may be canceled or terminated by the TOWNSHIP and all money due or to become due hereunder may be forfeited, for a violation of the terms or conditions of this portion of the AGREEMENT.

99.6.7.11. **No-Lien AGREEMENT**—it is agreed between the TOWNSHIP and the CONTRACTOR as part of this AGREEMENT, that neither the CONTRACTOR nor any SUBCONTRACTOR or person furnishing labor or materials to the CONTRACTOR for the performance of the AGREEMENT with the TOWNSHIP shall file a mechanic's lien against the building or the land for the WORK and materials done or furnished or any part thereof.

In the event the above covenant is breached and there is evidence during construction of any lien or claim for which, if established, the TOWNSHIP might become liable, and which is chargeable to the CONTRACTOR, the TOWNSHIP shall have the right to terminate the AGREEMENT and retain part of the payments then due or thereafter to become due in an amount sufficient to completely indemnify the TOWNSHIP against such lien or claim. If such retention is sufficient to satisfy the lien or claim, TOWNSHIP shall have available all remedies at law and equity. Any changes to the Pennsylvania Mechanic's Lien Law must be adhered to or it will take precedence over this section.

99.6.7.12. **CHANGE ORDERS; Extra WORK:**

CONTRACTOR agrees that no claim for extra WORK or materials, not specifically provided for in the CONTRACT DOCUMENTS, done or furnished by the CONTRACTOR, will be allowed by the TOWNSHIP, nor shall CONTRACTOR do any WORK or furnish any materials not covered by the DRAWINGS and SPECIFICATIONS, unless such WORK is ordered in writing by the ENGINEER an approved by the TOWNSHIP or such WORK is covered by Sections 99.14.6.14 or 99.6.14.2 of the General Conditions. In no event shall the TOWNSHIP incur any liability by reason of any verbal directions or instructions

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that may be given by the ENGINEER, or his authorized assistants, nor will the TOWNSHIP be liable for any materials furnished or used, or for any WORK done, unless said materials, WORK or labor are required of the CONTRACTOR on written order furnished by the ENGINEER and approved by the TOWNSHIP. Any such WORK done or materials which may be furnished by the CONTRACTOR without such written order first being given, shall be at the CONTRACTOR'S own risk, cost and expense, and the CONTRACTOR hereby covenants and agrees that with out such written order no claim will be made for compensation for WORK or materials so done or furnished.

99.6.7.13. **BONDS and Insurance** – CONTRACTOR agrees to furnish to TOWNSHIP BONDS, insurance and certificates of insurance as specified in the CONTRACT DOCUMENTS and to comply with all other provisions of the CONTRACT DOCUMENTS.

99.6.7.14. **Non-Assignability** – CONTRACTOR covenants and agrees that it will not assign this AGREEMENT or any monies due or to become due hereunder without the prior written consent of the TOWNSHIP, except that the WORK may be subcontracted to responsible SUBCONTRACTORS. Further, any attempt by CONTRACTOR to assign this AGREEMENT will be a breach hereunder and TOWNSHIP shall be entitled to each and every remedy set forth in the CONTRACT DOCUMENTS.

99.6.7.15. **Final Payment**

99.6.7.15.1. Prior to final payment of the CONTRACT PRICE by TOWNSHIP, CONTRACTOR shall complete all the necessary procedures for acceptance of the PROJECT under Section 99.6.14.14 of the General Conditions. After favorable and final inspection has been reported by the ENGINEER, CONTRACTOR must submit the following:

99.6.7.15.1.1. Proof of payment for all labor and materials. In the event that there shall be any claims against CONTRACTOR, its agents or employees for wages or damages arising out of the WORK, CONTRACTOR must chow proof that adequate funds have been set aside or adequate insurance is available to pay claims in the event they are valid;

99.6.7.15.1.2. CONTRACTOR shall furnish TOWNSHIP with FINANCIAL SECURITY to secure structural integrity of the IMPROVEMENTS. Such FINANCIAL SECURITY shall be in and amount equal to fifty percent (50%) of the final CONTRACT value and shall be enforceable for a period of two (2) years, in accordance with Section 5.25.2 of the Instructions to BIDDERS.

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99.6.7.16. **Miscellaneous:**

99.6.7.16.1. **Heirs, Assigns** – TOWNSHIP and CONTRACTORS each binds itself, its partners, successors, assigns and legal representatives to the other party hereto in respect of all covenants, AGREEMENTS and obligations contained in the CONTRACT DOCUMENTS.

99.6.7.16.2. **Gender Clause** – the singular shall include the plural, the plural the singular and the use of any gender shall applicable to all genders.

99.6.7.16.3. **Captions** – the paragraph captions contained herein are for convenience only and in no way limit or alter the terms the terms and conditions hereof.

99.6.7.16.4. **Law Governing** – this AGREEMENT shall be constructed in accordance with the laws of the Commonwealth of Pennsylvania.

99.6.7.16.5. **Integration Clause** – the CONTRACT DOCUMENTS constitute the entire AGREEMENT between the TOWNSHIP and the CONTRACTOR and there are no other understandings, oral or written, relating to the subject matter hereof. This AGREEMENT may not be changed, modified, or amended in whole or in part, except in writing, signed by all parties.

99.6.7.17. **Execution Form**

WITNESS the due execution hereof the day and year first above written.

ATTEST:

TOWNSHIP OF UPPER ST. CLAIR

By: _____

ATTEST:

CONTRACTOR

By: _____

AGREEMENT

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99.6.8. FORM OF PERFORMANCE BOND

C: _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that _____
(insert full name and address or legal title
of **CONTRACTOR**)

as Principle, hereinafter called **CONTRACTOR**, and _____
(insert full name, address or legal title of
SURETY)

as **SURETY**, hereinafter called **SURETY**, are held and firmly bound unto as Obligee, hereinafter
called **TOWNSHIP**, in the amount of _____

Dollars (\$ _____), for the payment whereof **CONTRACTOR** and **SURETY** bind
themselves, their heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents.

SURETY must be listed in the current issue of the U.S. Treasury Department Circular 570. The
underwriting limitation states in Circular 570 for the **SURETY** must equal or exceed the
CONTRACT PRICE.

WHEREAS, _____

CONTRACTOR has by written **AGREEMENT** dated _____, 20____, entered into
a **CONTRACT** with **TOWNSHIP** for _____
(here insert full name, address and description of **PROJECT**)

PERFORMANCE BOND

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in accordance with **DRAWINGS** and **SPECIFICATIONS** prepared by the **ENGINEER** by reference made a part hereof, _____ **NOW , THEREFORE,**
THE CONDITION OF THIS OBLIGATION is such that, if **CONTRACTOR** shall promptly and faithfully perform said **AGREEMENT**, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The **SURETY** hereby waives notice of any alteration or extension of time made by the
TOWNSHIP

Whenever **CONTRACTOR** shall be, and declared by **TOWNSHIP** to be in default under the **AGREEMENT**, the **TOWNSHIP** having performed the **TOWNSHIP'S** obligations hereunder, the **SURETY** may promptly remedy the default, or shall promptly:

1. Complete the **AGREEMENT** in accordance with its terms and conditions, or
2. Obtain a **BID** or **BIDS** for completing the **AGREEMENT** in accordance with its terms and conditions and upon determination by **SURETY** of the lowest **RESPONSIBLE BIDDER**, or, if the **TOWNSHIP** elects, upon determination by the **TOWNSHIP** and the **SURETY** jointly of the lowest **RESPONSIBLE BIDDER**, arrange for a **CONTRACT** between such **BIDDER** and **TOWNSHIP**, and make available as **WORK** progresses (even though there should be a default or a succession of defaults under the **AGREEMENT** or **AGREEMENTS** of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the **CONTRACT PRICE**; but not exceeding, including other costs and damages for which the **SURETY** may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the **CONTRACT PRICE**", as used in this paragraph, shall mean the total amount payable by **TOWNSHIP** to **CONTRACTOR** under the **AGREEMENT** and any amendments thereto. Less the amount properly paid by **TOWNSHIP** to **CONTRACTOR**.

PERFORMANCE BOND

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Any suit under this **BOND** must be instituted before the expiration of one (1) year from the date on which final payment under the **AGREEMENT** falls due.

No right of action shall accrue on this **BOND** to or for the use of any person or corporation other than the **TOWNSHIP** named herein or the heirs, executors, administrators or successors of the **TOWNSHIP**.

Signed and sealed this _____ day of _____, 20____.

(Witness)

(Principal) (SEAL)

(Title)

(Witness)

(SURETY) (SEAL)

(Title)

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99.6. 9. FORM OF LABOR AND MATERIAL PAYMENT BOND

C: _____

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that _____
(insert full name and address or legal title)
_____ of **CONTRACTOR**)

as Principle, hereinafter called **CONTRACTOR**, and _____
(insert full name, address or legal title of
_____ **SURETY**)

as **SURETY**, hereinafter called **SURETY**, are held and firmly bound unto the **TOWNSHIP of Upper St. Clair**, hereinafter, called **TOWNSHIP**, in the amount of

_____ Dollars (\$ _____),
(insert a sum equal to at least one half of the **CONTRACT PRICE**)

for the payment whereof Developer and **SURETY** bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, _____

Principal has, by written **AGREEMENT** dated _____, 20____, entered into a **CONTRACT** with **TOWNSHIP** for _____
(here insert full name, address and description of **PROJECT**)

in accordance with **DRAWINGS** and **SPECIFICATIONS** prepared by the **ENGINEER** which one by reference made a part hereof, _____.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payments to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the **AGREEMENT**, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct **AGREEMENT** with the Principal or with a **SUBCONTRACTOR** of the Principal for labor, material or both, used or reasonably required for use in the performance of the **AGREEMENT**, labor and material being construed to include that part of water, gas, service, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the **AGREEMENT**.
2. The above named Principal and **SURETY** hereby jointly and severally agree with the **TOWNSHIP** that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) **DAYS** after the date on which the last of such claimant's **WORK** or labor was done or performed, or materials were furnished by such claimant, may sue on this **BOND** for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The **TOWNSHIP** shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - 3.1. Unless claimant, other than one having a direct **AGREEMENT** with the Principals, shall have given written notice to any two (2) of the following: the Principal, the **TOWNSHIP**, or the **SURETY** above named, within ninety (90) **DAYS** after such claimant did or performed the last of the **WORK** or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the **WORK** or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, **TOWNSHIP** or **SURETY**, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the Commonwealth of Pennsylvania, save that such service need not be made by a public officer

LABOR AND MATERIAL PAYMENT BOND

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99.6.10. FORM OF CERTIFICATE OF PUBLIC LIABILITY

ACORD_{TM} CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY)
PRODUCER INSURED	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
---------------------------	--

§99.6

UPPER ST. CLAIR CODE

§99.6

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99.6.11. FORM OF NOTICE TO PROCEED

C: _____

NOTICE TO PROCEED

C- _____, 20_____

To: _____

CONTRACT for _____

We are enclosing herewith a fully executed copy of the **CONTRACT DOCUMENTS** for the above captioned **PROJECT**.

You are notified that the **CONTRACT TIME** under the above **CONTRACT** will commence to run on _____, 20_____. By that date, you are to start performing the **WORK** and your other obligations under the **CONTRACT DOCUMENTS**. The dates of **SUBSTANTIAL COMPLETION** and Final Completion are set forth in the **AGREEMENT**; they are _____, 20____ and _____, 20____, respectively.

Before you may start any **WORK** at the site, you must have delivered to the **TOWNSHIP** of Upper St. Clair (with copies to **ENGINEER**) certificates of insurance which is required and maintained in accordance with the **CONTRACT DOCUMENTS**.

Also before you may start any **WORK** at the site, you must contact the **ENGINEER** to arrange a pre-construction conference. **WORK** at the site must be started by _____, 20____ as indicated in the **CONTRACT DOCUMENTS**.

Township of Upper St. Clair

By: _____
(Authorized Signature)

(Title)

Enclosure:
Copy to:

99.6.12. FORM OF NOTICE TO COMMENCEMENT

C: _____

NOTICE OF COMMENCEMENT

_____, 20_____

To: Township of Upper St. Clair
1820 McLaughlin Run Road
Upper St. Clair, Pennsylvania 15241

CONTRACT for _____

Pursuant to the above **CONTRACT**, you are notified that the undersigned hereby proposes and agrees to commence **WORK** on the above **CONTRACT** on the _____ day of _____, 20_____.

Please find attached to this Notice, in accordance with the **AGREEMENT**, the following:

1. Names, addresses, and telephone numbers of the residents superintendent, **CONTRACTOR** and **SUBCONTRACTORS** and other responsible persons to be contacted in case of emergencies;
2. A detailed schedule of construction which is to be updated during construction if changes are made; and
3. A list of suppliers.

CONTRACTOR

By: _____

(Title)

Date: _____, 20_____

CONTRACT TIME prior to this **CHANGE ORDER** _____
DAYS or Date

Net (Increase/Decrease) resulting from this **CHANGE ORDER** _____
DAYS

Current **CONTRACT TIME** Including this **CHANGE ORDER** _____
DAYS or Date

Township of Upper St. Clair

By: _____

Date: _____, 20____

The Above Changes are Approved:

ENGINEER
By: _____

Date: _____, 20____

The Above Changes are Accepted:

CONTRACTOR
By: _____

Date: _____, 20____

99.6.14. FORM OF GENERAL CONDITIONS

C: _____

99.6.14.1. **Definitions**—the General Conditions, which are part of the CONTRACT DOCUMENTS, incorporated by reference the Definitions and Terms as set forth in the Instructions to BIDDERS.

Wherever used in these General Conditions, the definitions have the meanings indicated which are applicable to both the singular and the plural thereof.

99.6.14.1.2. **Preliminary Matters**

99.6.14.1.2.1. **Execution of AGREEMENT**—at least three counterparts of the AGREEMENT and such other CONTRACT DOCUMENTS as practicable will be executed and delivered by CONTRACTOR to TOWNSHIP within ten (10) DAYS of the NOTICE OF AWARD; and TOWNSHIP will execute and deliver one counterpart to CONTRACTOR within a reasonable time after receipt of the executed AGREEMENT from CONTRACTOR. TOWNSHIP, CONTRACTOR and ENGINEER shall each receive an executed counterpart of the CONTRACT DOCUMENTS and additional conformed copies as required.

99.6.14.1.2.2. **Delivery of BONDS**—when he delivers the executed AGREEMENTS to TOWNSHIP, CONTRACTOR shall also deliver to TOWNSHIP such BONDS as he may be required to furnish in accordance with the CONTRACT DOCUMENTS.

99.6.14.1.2.3. **Copies of Documents**—TOWNSHIP shall furnish to CONTRACTOR up to ten (10) copies (unless otherwise provided in the Supplementary Conditions) of the CONTRACT DOCUMENTS as are reasonably necessary for the execution of the WORK. Additional copies will be furnished, upon request, at the cost of reproduction.

99.6.14.1.2.4. **CONTRACTOR'S Pre-Start Representations**— CONTRACTOR represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the CONTRACT DOCUMENTS, WORK, locality, and with all local conditions, federal, state, and local laws, ordinances, rules and regulations that may in any manner affect performance of the WORK, and represents that he has correlated his study and observations with the requirements of the CONTRACT DOCUMENTS. CONTRACTOR also represents that he has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the General Conditions of the SPECIFICATIONS and made such additional surveys and investigations as he deems necessary for the performance of the WORK at the CONTRACT PRICE in accordance with the requirements of the CONTRACT DOCUMENTS and that he has correlated the results of all data with the requirements of the CONTRACT DOCUMENTS.

99.6.14.1.2.5. **Commencement of CONTRACT TIME; NOTICE TO PROCEED** – the CONTRACT TIME will commence to run on the thirtieth (30th) DAY after the DAY on which the executed AGREEMENT is delivered by TOWNSHIP to CONTRACTOR; or, if a NOTICE TO PROCEED is given, on the DAY indicated in the NOTICE TO PROCEED; but in no event shall the CONTRACT TIME commence to run later than the ninetieth (90th) DAY after the DAY of BID opening or the thirtieth (30th) DAY after the DAY on which TOWNSHIP delivers the executed AGREEMENT to CONTRACTOR. A NOTICE TO PROCEED may be given at any time within thirty (30) DAYS after the DAY on which TOWNSHIP delivers the executed AGREEMENT to CONTRACTOR.

99.6.14.1.2.6. **Starting the PROJECT** – CONTRACTOR shall start to perform his obligations under the CONTRACT DOCUMENTS on the date when the CONTRACT TIME commences to run. No WORK shall be done at the site prior to the date on which the CONTRACT TIME commences to run.

99.6.14.1.2.7. **Pre-Construction Meeting** – A pre-construction meeting must be held prior to start of construction with the ENGINEER and appropriate TOWNSHIP officials.

99.6.14.1.2.8. Before Starting Construction

99.6.14.1.2.8.1. Before undertaking each part of the WORK, CONTRACTOR shall carefully study and compare the CONTRACT DOCUMENTS and check and verify pertinent figures shown thereon and all applicable field measurements. He shall at once report in writing to ENGINEER any conflict, error or discrepancy which he may discover, however, he shall not be liable to TOWNSHIP or ENGINEER for his failure to discover any conflict, error or discrepancy in the DRAWINGS or SPECIFICATIONS.

99.6.14.1.2.8.2. Within ten (10) DAYS after delivery of the executed AGREEMENT by TOWNSHIP to CONTRACTOR, CONTRACTOR shall submit to ENGINEER for approval, an estimated progress schedule indicating the starting and completion dates of the various stages of the WORK, and a preliminary schedule of SHOP DRAWING submissions.

99.6.14.1.2.8.3. Before starting the WORK at the site, CONTRACTOR shall furnish TOWNSHIP and ENGINEER certificates of insurance as required by the CONTRACT DOCUMENTS. Within twenty (20) DAYS after delivery of the executed AGREEMENT by TOWNSHIP to CONTRACTOR, but before starting the WORK at the site, a conference will be held to review the above schedules, to establish procedures for handling SHOP DRAWINGS and other submissions and for processing APPLICATIONS FOR PAYMENT, and to establish a working understanding between the parties as to the PROJECT. Present at the conference will be TOWNSHIP or his representative, ENGINEER, Resident Project Representatives, CONTRACTOR and his Superintendent.

99.6.14.1.2.8.4. Notice prior to start of WORK and at the pre-construction meeting, the CONTRACTOR shall file with the TOWNSHIP a NOTICE OF COMMENCEMENT in form set forth in Section 99.6.3.12 of the CODE not less than two (2) DAYS prior to start of WORK and shall also submit the following

GENERAL CONDITIONS

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99.6.14.1.2.8.4.1. Names, addresses, and telephone numbers of resident superintendent, CONTRACTOR and SUBCONTRACTORS and other responsible persons to be contacted in case of emergencies.

99.6.14.1.2.8.4.2. A detailed schedule of construction which is to be updates during construction if changes are made; and

99.6.14.1.2.8.4.3. A list of suppliers.

99.6.14.3. **Correlation, Interpretation and Intent of CONTRACT DOCUMENTS**

99.6.14.3.1. It is the intent of the SPECIFICATIONS and DRAWINGS to describe a complete PROJECT to be constructed in accordance with the CONTRAT DOCUMENTS. The CONTRACT DOCUMENTS comprise the entire AGREEMENT between TOWNSHIP and CONTRACTOR. They may be altered only be a MODIFICATION.

99.6.14.3.2. The CONTRACTOR DOCUMENTS are complementary; what is called for by one is as binding as if called for by all. If CONTRACTOR finds a conflict, error or discrepancy in the CONTRACT DOCUMENTS, he shall call it to ENGINEER'S attention in writing at once and before proceeding with the WORK affected thereby; however, he shall not be liable to TOWNSHIP or ENGINEER for his failure to discover any conflicts, error or discrepancy in the SPECIFICATIONS or DRAWINGS. In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order: AGREEMENT, MODIFICATIONS, Addenda, Supplementary Conditions, Instructions to BIDDERS, General Conditions, SPECIFICATIONS and DRAWINGS. Figure dimensions on DRAWINGS shall govern over general DRAWINGS. And WORK that may reasonably be inferred from the SPECIFICATIONS or DRAWINGS as being required to produce the intended result shall be supplied whether or not it is specifically called for. WORK, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

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99.6.14.4. Availability of Lands; Physical Conditions; Reference Points

99.6.14.4.1. **Physical Conditions-Surveys and Reports**—reference is made to the General Conditions of the SPECIFICATIONS for identification of those surveys and investigation reports of subsurface and latent physical conditions at the PROJECT site or otherwise affecting performance of the WORK which have been relied upon by ENGINEER in preparation of the DRAWINGS and SPECIFICATIONS.

99.6.14.4.2. **Unforeseen Physical Conditions**—CONTRACTOR shall promptly notify the TOWNSHIP and ENGINEER in writing of any subsurface or latent physical conditions at the site differing from those indicated in the CONTRACT DOCUMENTS. ENGINEER will promptly investigate those conditions and advise TOWNSHIP in writing if further surveys or subsurface tests are necessary. Promptly thereafter, TOWNSHIP shall obtain the necessary additional surveys and tests and furnish copies to ENGINEER and CONTRACTOR. If ENGINEER finds that the results of such surveys or tests indicate that there are substantial or latent physical conditions which differ materially from those intended in the CONTRACT DOCUMENTS, and which could not reasonably be issued incorporating the necessary revisions, an equitable adjustment may be made in the CONTRACT price, if said conditions cause an increase or decrease in the CONTRACTORS costs, or the time required for performance of any part of the work under this CONTRACT.

99.6.14.4.3. **Reference Points**—TOWNSHIP shall provided engineering surveys for construction to establish reference points which in his judgment are necessary to enable CONTRACTOR to proceed with the WORK. CONTRACTOR shall be responsible for surveying and laying out the WORK (unless otherwise provided in the Supplementary Conditions), and shall protect and preserve the established reference points and shall make no changes or relocations with out the prior written approval of TOWNSHIP. He shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. CONTRACTOR shall replace and accurately relocate all reference points so lost, destroyed or moved.

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99.6.14.5. **BONDS and Insurance**99.6.14.5.1. **Performance, Payment and Other BONDS**

99.6.14.5.1.1. CONTRACTOR shall furnish performance and payment BONDS as security for the faithful performance and payment of all his obligations under the CONTRACT DOCUMENTS. These BONDS shall be in amounts at least equal to the CONTRACT PRICE, and (except as otherwise provided in the Supplementary Conditions) in such form and with such sureties as are licensed to conduct business in Pennsylvania and are named in the current list of "SURETY Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, US Treasury Department.

99.6.14.5.1.2. If the SURETY on any BOND furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business in revoked and terminated in Pennsylvania, CONTRACTOR shall within five (5) DAYS thereafter substitute another BOND and SURETY, both of which shall be acceptable to TOWNSHIP.

99.6.14.5.2. **CONTRACTOR'S Liability Insurance** – CONTRACTOR shall purchase and maintain such insurance as will protect him from claims under workmen's compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees, and claims insured by damages because of bodily injury, sickness or disease, or death of any person other than his employees; including claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible property, including loss of use resulting there from—any or all of which may arise out of or result from CONTRACTOR'S operations under the CONTRACT DOCUMENTS, whether such operation be by himself or by any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall include the specific coverage and be written for the not less than any limits of

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liability and maximum deductible specified in the BID, and shall include contractual liability insurance and shall include TOWNSHIP and ENGINEER as additional insured parties. Before starting the WORK, CONTRACTOR shall file with TOWNSHIP and ENGINEER certificates of such insurance, acceptable to TOWNSHIP; these certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changes until at least fifteen (15) DAYS prior written notice has been given to TOWNSHIP and ENGINEER.

99.6.3.14.5.3. **Additional BONDS and Insurance** – prior to delivery of the executed AGREEMENT by TOWNSHIP to CONTRACTOR, TOWNSHIP may require additional insurance, in such form and with such SURETIES or insurer as TOWNSHIP may require. If such other BONDS or such other insurance are specified by written instructions given prior to opening of BIDS, the premiums shall be paid by CONTRACTOR.

99.6.3.14.6. **CONTRACTOR’S Responsibilities**

99.6.3.14.6.1. **Public and Private Improvements CODE** – all construction shall be conducted in accordance with Section 99.1.7 of the CODE.

99.6.3.14.6.2. **Supervision and Private Improvement CODE**

99.6.3.14.6.2.1. CONTRACTOR shall supervise and direct the WORK and be solely responsible to see that the WORK is done in accordance with the Construction Standards and Construction SPECIFICATIONS.

99.6.3.14.6.2.2. CONTRACTOR shall keep on the WORK at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to TOWNSHIP and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR’S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

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99.6.14.6.3. Labor, Materials, and Equipment

99.6.14.6.3.1. CONTRACTOR shall provide competent, suitable qualified personnel to survey and lay put the WORK and perform construction as required by the CONTRACT DOCUMENTS. He shall at all times maintain good discipline and order at the site.

99.6.14.6.3.2. CONTRACTOR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the WORK.

99.6.14.6.3.3. All materials and equipment shall be new, except as other wise provided in the CONTRACT DOCUMENTS. The CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

99.6.14.6.3.4. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processors, except as otherwise provided in the CONTRACT DOCUMENTS.

99.6.14.6.4. **Substitute Materials or Equipment** – if the General Conditions, law, ordinance or applicable rules or regulations permit CONTRACTOR to furnish or use a substitute, and if CONTRACTOR wishes to furnish or use a proposed substitute he shall, prior to the conference called for by Section 99.6.3.14.2.7.3 (unless another time is provided in the General Conditions), make written application to ENGINEER for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified; stating whether or not its incorporation in or use in connection with the

PROJECT is subject to the payment of any license fee or royalty; and identifying all variations of the proposed substitute from that specified and indicating available maintenance service. No substitute shall be ordered or installed without the written approval of ENGINEER who will be the judge of equality and may require CONTRACTOR to furnish such other data about the proposed substitute, as he considers pertinent. No substitute shall be ordered or installed without such performance guarantee and BONDS as TOWNSHIP may require which shall be furnished at CONTRACTOR'S expense.

99.6.14.6.5. **Concerning SUBCONTRACTORS**

99.6.14.6.5.1. CONTRACTOR shall not employ any SUBCONTRACTOR or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom TOWNSHIP or ENGINEER may have reasonable objection. A SUBCOTRACTOR or other person or organization identifies in writing to TOWNSHIP and ENGINEER by CONTRACTOR prior to the NOTICE OF AWARD and not objected in writing by TOWNSHIP or ENGINEER prior to the NOTICE OF AWARD will be deemed acceptable to TOWNSHIP and ENGINEER. Acceptance of any SUBCONTRACTOR, other person or organization by TOWNSHIP or ENGINEER shall not constitute a waiver of any right of TOWNSHIP or ENGINEER to reject defective WORK or WORK not in conformance with the CONTRACT DOCUMENTS. If TOWNSHIP or ENGINEER after due investigation has reasonable objection to any SUBCONTRACOR, other person or organization proposed by CONTRACTOR after the NOTICE OF AWARD, CONTRACTOR shall submit an acceptable substitute and the CONTRACT PRICE shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate CHANGE ORDER shall be issued.

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CONTRACTOR shall not be required to employ any SUBCONTRACTOR, other person or organization against whom he has reasonable objections. CONTRACTOR shall not without the consent of TOWNSHIP and ENGINEER make any substitution for any SUBCONTRACTOR, other person or organization who has been accepted by TOWNSHIP and ENGINEER unless ENGINEER determines that there is good cause for doing so.

99.6.14.6.5.2. CONTRACTOR shall be fully responsible for all acts and omissions of his SUBCONTRACTORS and of all persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the CONTRACT DOCUMENTS shall create any contractual relationship between TOWNSHIP or ENGINEER and any SUBCONTRACTOR or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of TOWNSHIP or ENGINEER to pay or to see to the payment of any moneys due any SUBCONTRACTOR, or other person or organization except as may otherwise be required by law. TOWNSHIP or ENGINEER may furnish to any SUBCONTRACTOR or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account of specific WORK done in accordance with the schedule of values.

99.6.14.6.5.3. The divisions and sections of the SPECIFICATIONS and the identifications of any DRAWINGS shall not control CONTRACTOR in dividing the WORK among SUBCONTRACTORS or delineating the WORK to be performed by any specific trade.

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99.6.14.6.5.4. CONTRACTOR agrees to bind specifically every SUBCONTRACTOR to the applicable terms and conditions of the CONTRACT DOCUMENTS for the benefit of TOWNSHIP.

99.6.14.6.6. **Patent Fees and Royalties** – CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the WORK of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the CONTRACT DOCUMENTS for use in the performance of the WORK and if to the actual knowledge of TOWNSHIP or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by TOWNSHIP in the CONTRACT DOCUMENTS. CONTRACTOR shall indemnify and hold harmless TOWNSHIP and ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorney's fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the WORK or resulting from the incorporation in the WORK of any invention, design, process, product or device not specified in the CONTRACT DOCUMENTS, and shall defend all such claims in connection with any alleged infringement of such rights.

99.6.14.6.7. **Permits** – CONTRACTOR shall obtain and pay for all construction permits and licenses and shall pay for all governmental charges and inspection fees necessary for the prosecution of the WORK, which are applicable at the time of his BID. TOWNSHIP shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall also pay all public UTILITY charges.

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99.6.14.6.8. **Laws and Regulations** – CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the WORK. If CONTRACTOR observes that the SPECIFICATIONS or DRAWINGS are at variance therewith, he shall give ENGINEER prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate MODIFICATION. If CONTRACTOR performs any WORK knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to ENGINEER, he shall bear all costs arising therefrom; however, it shall not be his primary responsibility to make certain that the SPECIFICATIONS and DRAWINGS are in accordance with such laws, ordinances, rules and regulations.

99.6.14.6.9. **Taxes** – CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the law of the Commonwealth of Pennsylvania.

99.6.14.6.10. **Use of Premises**

99.6.14.6.10.1. CONTRACTOR shall confine his equipment, the storage of materials and equipment, the storage of materials and equipment and the operations of his workmen to areas permitted by law, ordinances, permits, or the requirements of the CONTRACT DOCUMENTS, and shall not unreasonably encumber the premises with materials or equipment.

99.6.14.6.10.2. CONTRACTOR shall not load nor permit any part of any structure to be loaded with weights that will endanger the structure, nor shall he subject any part of the WORK to stresses or pressures that will endanger it.

99.6.14.6.10.3. **Dirt Control** – CONTRACTOR shall provided mud free, dust free areas on the WORK site and all construction vehicles, equipment, materials and supplies shall be parked or stored in these areas when not in use.

99.6.14.6.10.4. **Parking** - No construction vehicles or vehicles of developers' employees, equipment, materials or supplies shall encroach onto a STREET.

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99.6.14.6.11. **Hours of Construction** – the operation of heavy construction or excavation machinery, including, but not limited to, bulldozers, highlifts, backhoes, trucks, poser shovels, pumps and jack hammers, and the operation of equipment such as saws and drills or any other type of machinery in conjunction with the construction of the PROJECT, which causes noise sufficient to disturb the peace and general tranquility of the general public shall be prohibited in the entire TOWNSHIP between the hours of 7:00 p.m. and 7:00 a.m. , Monday through Saturday, and all day Sunday and on federally designated legal holidays.

99.6.14.6.12. **Record DRAWINGS** – CONTRACTOR shall keep one record copy of all SPECIFICATIONS, DRAWINGS, Addenda, MODIFICATIONS, and SHOP DRAWINGS at the site in good order and annotated to show all changes made during the construction process. These shall be available to ENGINEER and shall be delivered to him for TOWNSHIP upon completion of the PROJECT.

99.6.14.6.13. **Safety and Protection** – CONTRACTOR shall be responsible for initiating, maintaining and supervising all precautions and programs in connection with the WORK. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

99.6.14.6.13.1. All employees on the WORK and other persons who may be affected thereby,

99.6.14.6.13.2. All the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and

99.6.14.6.13.3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and UTILITIES not designated for removal, relocation or replacement in the course of construction.

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CONTRACTOR shall comply with all applicable laws, ordinances,, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for its safety and protection. He shall notify TOWNSHIP of the adjacent UTILITIES when prosecution of the WORK may affect them. All damage, injury or loss to any property referred to in Section 99.6.14.6.3.2. caused, directly or indirectly, in whole or in part, by CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR; except damage or loss attributable to the fault of DRAWINGS or SPECIFICATIONS or to the acts or omissions of TOWNSHIP or ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR. CONTRACTOR'S duties and responsibilities for the safety and protection of the WORK shall continue until such time as all the WORK is completed and ENGINEER has issued a notice to TOWNSHIP and CONTRACTOR in accordance with Section 99.6.14.14. that WORK is acceptable.

99.6.14.6.14. **Emergencies** – in emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, CONTRACTOR with out special instruction or authorization from ENGINEER or TOWNSHIP, is obligated to act, at his discretion, to prevent threatened damage, injury or loss. He shall give ENGINEER prompt written notice of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved. If CONTRACTOR believes that additional WORK done by him in an emergency which arose from causes beyond his control entitles him to an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME he may make a claim therefore as provided in Sections 99.6.14.11. and 99.6.14.13.

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99.6.14.6.15. SHOP DRAWINGS and Samples

99.6.14.6.15.1. After checking and verifying all field measurements, CONTRACTOR shall submit to ENGINEER for approval, in accordance with the accepted schedule of SHOP DRAWINGS submissions) see Section 99.6.14.2.7.2.) five (5) copies (or at ENGINEER'S option, one reproducible copy) of all SHOP DRAWINGS, which shall have been checked by and stamped with the approval of CONTRACTOR and identified as ENGINEER may require. The data shown on the SHOP DRAWINGS will be complete with respect to dimensions, design criteria, materials of construction and the like to enable ENGINEER to review the information as required.

99.6.14.6.15.2. CONTRACTOR shall also submit to ENGINEER for approval with such promptness as to cause no delay in WORK, all samples required by the CONTRACTOR DOCUMENTS. All samples will have been checked by and stamped with the approval of CONTRACTOR, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.

99.6.14.6.15.3. At the time of each submission, CONTRACTOR shall in writing call ENGINEER'S attention to any deviations that the SHOP DRAWINGS or sample may have from the requirements of the CONTRACT DOCUMENTS.

99.6.14.6.15.4. ENGINEER will review and approve with reasonable promptness SHOP DRAWINGS and samples, but his review and approval shall be only for conformance with the information given in the CONTRACT DOCUMENTS. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make any corrections required by ENGINEER and shall return the required number of corrected copies of SHOP DRAWINGS and

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resubmit new samples until approved. CONTRACTOR shall direct specific attention in writing or on resubmitted SHOP DRAWINGS to revisions other than the corrections called for by ENGINEER on previous submissions.

CONTRACTOR'S stamp of approval of any SHOP DRAWING or sample shall constitute a representation to TOWNSHIP and ENGINEER that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or he assumes full responsibility for doing so, and that he has reviewed or coordinated each SHOP DRAWING or sample with the requirements of the WORK and the CONTRACT DOCUMENTS.

99.6.14.6.15.5. Where a SHOP DRAWING or sample submission is required by the SPECIFICATIONS, no related WORK shall be commenced until the submission has been approved by ENGINEER. A copy of each approved SHOP DRAWING and each approved sample site shall be kept in good order by CONTRACTOR at the site and shall be available to ENGINEER.

99.6.14.6.15.6. ENGINEER'S approval of SHOP DRAWINGS or samples shall not relieve CONTRACTOR from his responsibility for any deviations from the requirements of the CONTRACT DOCUMENTS unless CONTRACTOR, has, in writing, called ENGINEER'S attention to such deviation at the time of submission and ENGINEER has given written approval to the specific deviation, nor shall any approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the SHOP DRAWINGS.

99.6.14.6.16. **Cleaning** – CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the WORK, and at the completion of the WORK he shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by TOWNSHIP. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the CONTRACT DOCUMENTS.

99.6.14.6.17. **Indemnification**

99.6.14.6.17.1. CONTRACTOR shall indemnify and hold harmless TOWNSHIP and ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the WORK itself) including the loss of use resulting there from and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

99.6.14.6.17.2. In any and all claims against TOWNSHIP or ENGINEER or any of their agents or employees by any employee of CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Section 99.6.3.14.6.17.1. shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefit acts.

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99.6.14.7. WORK by Others

99.6.14.7.1. TOWNSHIP may perform additional WORK related to the PROJECT by himself, or he may let other direct CONTRACTS therefore, which shall contain General Conditions similar to these. CONTRACTOR shall afford the other CONTRACTORS who are parties to such direct CONTRACTS (or TOWNSHIP, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution or WORK, and shall properly connect and coordinate his WORK with theirs.

99.6.14.7.2. If any part of CONTRACTOR'S WORK depends for proper execution or results upon the WORK of any such other CONTRACTOR (or TOWNSHIP), CONTRACTOR shall inspect and promptly report to ENGINEER in writing any defects or deficiencies in such WORK that render it unsuitable for such proper execution and results. His failure so to report shall constitute an acceptance of the other WORK as fit and proper for the relationship of his WORK except as to defects and deficiencies which any appear in the other WORK after the execution of his WORK.

99.6.14.7.3. CONTRACTOR shall do all cutting, fitting and patching of his WORK that may be required to make its several parts come together properly and get it to receive or be received by such other WORK. CONTRACTOR shall not endanger any WORK of others by cutting, excavating or otherwise altering their WORK and will only cut or alter their WORK with the written consent of ENGINEER and of the other CONTRACTORS whose WORK will be affected.

99.6.14.7.4. If the performance of additional WORK by other CONTRACTORS or TOWNSHIP is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to CONTRACTOR prior to starting any such additional WORK. If CONTRACTOR believes that the performance of such additional WORK by TOWNSHIP or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME he may make a claim therefore as provided in Section 99.6.14.11. and 99.6.14.12.

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99.6.14.8. TOWNSHIP'S Responsibilities

99.6.3.14.8.1. TOWNSHIP shall issue all communications to CONTRACTOR through ENGINEER.

99.6.3.14.8.2. TOWNSHIP shall furnish the data required under the CONTRACT DOCUMENTS within a reasonable time and shall make payments to CONTRACTOR after they are due as provided in Sections 99.6.14.14.4.1. and 99.6.14.14.8.

99.6.3.14.8.3. In connection with TOWNSHIP'S rights to stop WORK or suspend WORK see Sections 99.6.14.13.5. and 99.6.14.15.1. Sections 99.6.14.15.2. deals with TOWNSHIP'S rights to terminate services of CONTRACTOR under certain circumstances.

99.6.14.9. ENGINEER'S Status During Construction

99.6.14.9.1. ENGINEER will be TOWNSHIP'S representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as TOWNSHIP'S representative during construction are set forth in the CONTRACT DOCUMENTS and shall not be extended without written consent of TOWNSHIP and ENGINEER.

99.6.14.9.2. **Visits to Site** – ENGINEER will make periodic visits to the site to observe the progress and quality of the executed WORK and to determine, in general, if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS. He will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the WORK. His efforts will be directed toward providing assurance for TOWNSHIP that the completed PROJECT will conform to the requirements of the CONTRACT DOCUMENTS. On the basis of his on-site observations as an experienced and qualified design professional, he will keep TOWNSHIP informed of the progress of the WORK and will endeavor to guard TOWNSHIP against defects and deficiencies in the WORK and CONTRACTORS.

99.6.14.9.3. **Clarification and Interpretations** – ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the CONTRACT DOCUMENTS (in the form of DRAWINGS or otherwise) as he may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the CONTRACT DOCUMENTS. If CONTRACTOR believes that a written clarification and interpretation entitles him to an increase in the CONTRACT PRICE, he may make a claim therefore as provided in Section 99.6.14.11.

99.6.14.9.4. **Rejecting Defective WORK** – ENGINEER will have authority to disapprove or reject WORK, which is “defective” (which term is herein used to describe WORK that is unsatisfactory, faulty or defective, or does not conform to the requirements of the CONTRACT DOCUMENTS or does not meet the requirements of any inspection, test, or approval referred to in Section 99.6.14.12.2. or has been damaged prior to approval of final payment). He will also have authority to require special inspection or testing of the WORK as provided in Section 99.6.14.13.4.2, whether or not the WORK is fabricated, installed or completed.

99.6.14.9.5. **SHOP DRAWINGS, CHANGE ORDERS and Payments**

99.6.14.9.5.1. In connection with ENGINEER’S responsibility for SHOP DRAWINGS and samples, see Sections 99.6.14.6.15.1. through 99.6.14.6.15.6. inclusive.

99.6.14.9.5.2. In connection with ENGINEER’S responsibility for CHANGE ORDERS, see Sections 99.6.14.12. and 99.6.14.13.

99.6.14.9.5.3. In connection with ENGINEER’S responsibilities in respect of APPLICATIONS FOR PAYMENT, etc., see Section 99.6.14.14.

99.6.14.9.6. **Resident PROJECT Representatives** –If TOWNSHIP and ENGINEER agree, ENGINEER will furnish a Resident PROJECT Representative and assistants to assist ENGINEER in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Resident PROJECT Representative and assistants shall be set forth in an exhibit to be incorporated in the CONTRACT DOCUMENTS.

99.6.14.9.7. **Limitations on ENGINEER’S Responsibilities**

99.6.14.9.7.1. Neither ENGINEER’S authority to act under this Section 99.6.3.14.9 or elsewhere in the CONTRACT DOCUMENTS nor any decision made by him in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any SUBCONTRACTOR, any material man, fabricator, supplier or any of their agents or employees or any other person performing any of the WORK.

99.6.14.9.7.2. ENGINEER will not be responsible for CONTRACTOR’S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and he will not be responsible for CONTRACTOR’S failure to perform the WORK in accordance with the CONTRACT DOCUMENTS.

99.6.14.9.7.3. ENGINEER will be responsible for the acts or omissions of CONTRACTOR, or any SUBCONTRACTORS or any of his or their agents or employees, or any other persons at the site or otherwise performing any of the WORK.

99.6.14.10. **Change of CONTACT PRICE**

99.6.14.10.1. The CONTACT PRICE constituting the total compensation payable to CONTRACTOR for performing the WORK. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the CONTACT PRICE.

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99.6.14.10.2. The CONTRACT PRICE may only be changed by a CHANGE ORDER. Any claim for an increase in the CONTRACT PRICE shall be based on written notice delivered to TOWNSHIP and ENGINEER within fifteen (15) DAYS of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five (45) DAYS of such occurrence unless ENGINEER allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the CONTRACT PRICE shall be determined by ENGINEER if TOWNSHIP and CONTRACTOR cannot otherwise agree on the amount involved. Any change in the CONTRACT PRICE resulting from any such claim shall be incorporated in a CHANGE ORDER.

99.6.14.10.3. The value of any WORK covered by a CHANGE ORDER of any claim for an increase or decrease in the CONTRACT PRICE shall be determined in one of the following ways:

99.6.14.10.3.1. Where the WORK involved is covered by UNIT PRICES contained in the CONTRACT DOCUMENTS, by application of UNIT PRICES to the quantities of the items involved.

99.6.14.10.3.2. By mutual acceptance of a Lump Sum

99.6.14.10.4. **Cash Allowances** – It is understood that CONTRACTOR has included in the CONTRACT PRICE all allowances so named in the CONTRACT DOCUMENTS and shall cause the WORK so covered to be done by such material men, suppliers or SUBCONTRACTORS and for such sums within the limit of the allowances as ENGINEER may approve. Upon final payment, the CONTRACT PRICE shall be adjusted as required and an appropriate CHANGE ORDER issued. CONTRACTOR agrees that the original CONTRACT PRICE includes such sums as he deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be allowed.

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99.6.14.11. Change of the CONTRACT TIME

99.6.14.11.1. The CONTRACT TIME may only be changed by a CHANGE ORDER. Any claim for an extension in the CONTRACT TIME shall be based on written notice delivered to TOWNSHIP and ENGINEER within fifteen (15) DAYS of the occurrence of the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty five (45) DAYS of such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data. Any change in the CONTRACT TIME resulting from any such claim shall be incorporated in a CHANGE ORDER.

99.6.14.11.2. All time limits stated in the CONTRACT DOCUMENTS are of the essence of the AGREEMENT. The provisions of this Section 14 shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

99.6.14.12. Warranty and Guarantee; Tests and Inspections; Correction, Removal or Acceptance of Defective WORK

99.6.14.12.1. **Warranty and Guarantee** – CONTRACTOR warrants and guarantees to TOWNSHIP and ENGINEER that all materials and equipment will be new unless otherwise specified and that all WORK will be of good quality and free from faults or defects and in accordance with the requirements of the CONTRACT DOCUMENTS and of any inspections, test or approvals referred to in Section 99.6.14.12.2.1. All unsatisfactory WORK all faulty or defective WORK and all WORK not conforming to the requirements of the CONTRACT DOCUMENTS at the time of acceptance thereof or of such inspections, tests or approval, shall be considered affective. Prompt notice of all defects shall be given to CONTRACTOR. All defective WORK, whether or not in place, may be rejected, corrected or accepted as provided in this Section 99.6.14.12.

99.6.14.12.2. Tests and Inspections

99.6.14.12.2.1. If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or order of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by some public body, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish ENGINEER the required certificates of inspections, testing or approval. All other inspections, tests and approvals required by the CONTRACT DOCUMENTS shall be performed by organizations acceptable to TOWNSHIP and CONTRACTOR and the costs thereof shall be borne by TOWNSHIP unless otherwise specified.

99.6.14.12.2.2. CONTRACTOR shall give ENGINEER timely notice of readiness of the WORK for all inspections, tests, or approvals. If any such WORK required so to be inspected, tested or approved is covered without written approval of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation and such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given ENGINEER timely notice of his intention to cover such WORK and ENGINEER has not acted with reasonable promptness in response to such notice.

99.6.14.12.2.3. Neither observations by ENGINEER nor inspections, tests or approvals by persons other than CONTRACTOR shall relieve CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

99.6.14.12.3. **Access to WORK** – ENGINEER and his representatives and other representatives of TOWNSHIP will at reasonable times have access to the WORK. CONTRACTOR shall provide proper and safe facilities for such access and observation of the WORK and also for any inspection or testing thereof by other.

99.6.14.12.4. **Uncovering WORK**

99.6.14.12.4.1. If any WORK is uncovered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for his observation and replaced at CONTRACTOR'S expense.

99.6.14.12.4.2. If any WORK has been covered which ENGINEER has not specifically requested to observe prior to its being covered, or if ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, CONTRACTOR, at ENGINEER'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, material and equipment. If it is found that such WORK is defective, CONTRACTOR shall bear all expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services and an appropriate deductive CHANGE ORDER shall be issued. If, however, such WORK is not found to be defective, CONTRACTOR shall be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation inspection, testing and reconstruction if he makes a claim therefore as provided in Section 99.6.14.11. and 99.6.14.12.

99.6.14.12.5. **TOWNSHIP May Stop the WORK** – if the WORK is defective, or CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, or if CONTRACTOR fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment, TOWNSHIP may order CONTRACTOR to stop the WORK, or any portion thereof, until the cause for such order has been eliminated; however, this right of TOWNSHIP to stop the WORK shall not give rise to any duty on the part of TOWNSHIP to exercise this right for the benefit of CONTRACTOR or any other party.

99.6.14.12.6. **Correction or Removal of Defective WORK** – if required the WORK by ENGINEER prior to approval of final payment, CONTRACTOR shall promptly, without cost to TOWNSHIP and as specified by ENGINEER, either correct any

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defective WORK whether or not fabricated, installed or completed, or, if the WORK had been rejected by ENGINEER, remove it from the site and replace it with nondefective WORK. If CONTRACTOR does not correct such defective WORK or remove and replace such rejected WORK within a reasonable time, all as specified in a written notice from ENGINEER, TOWNSHIP may have the deficiency corrected or rejected WORK removed and replaced. All direct or indirect costs of such corrections or removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR, and an appropriate deductive CHANGE ORDER shall be issued. CONTRACTOR shall also bear the expense of making good all WORK of others destroyed or damaged by his correction, removal or replacement of his defective WORK.

99.6.14.12.7. **Two Year Correction Period** – if, after the approval of final payment and prior to the expiration of two (2) years after the date of SUBSTANTIAL COMPLETION or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the CONTRACT DOCUMENTS, any WORK is found to be defective, CONTRACTOR shall promptly, without cost to TOWNSHIP and in accordance with TOWNSHIP'S written instructions, either correct such defective WORK, or, if it has been rejected by TOWNSHIP, remove it from the site and replace it with nondefective WORK. If CONTRACTOR does not promptly comply with the terms of such instructions, TOWNSHIP may have the defective WORK corrected or the rejected WORK removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR.

99.6.14.12.8. **Acceptance of Defective WORK** – if, instead of requiring correction or removal and replacement of defective WORK, TOWNSHIP (and, prior to approval of final payment, also ENGINEER) prefers to accept it, he may do so. In such cases, if acceptance occurs prior to approval of final payment, a CHANGE ORDER shall be issued incorporating the necessary revisions in the CONTRACT DOCUMENTS, including appropriate reduction in the CONTRACT PRICE; or, if the acceptance occurs after approval of final payment, an appropriate amount shall be paid by CONTRACTOR to TOWNSHIP.

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99.6.14.12.9. **Neglected WORK by CONTRACTOR** – if CONTRACTOR should fail to prosecute the WORK in accordance with the CONTRACT DOCUMENTS, including any requirements of the progress schedule, TOWNSHIP, after seven (7) DAYS written notice to CONTRACTOR may, without prejudice to any other remedy, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against CONTRACTOR if ENGINEER approves such action, in the necessary revisions in the CONTRACT DOCUMENTS including an appropriate reduction in the CONTRACT PRICE. If the payments then or hereafter due CONTRACTOR are not sufficient to cover such amount, CONTRACTOR shall pay the difference to TOWNSHIP.

99.6.14.13. **Payments and Completion**

99.6.14.13.1. **Schedules** – at least ten (10) DAYS prior to submitting the first application for a progress payment, CONTRACTOR shall submit a progress schedule, a final schedule of SHOP DRAWING submission and a schedule of values of the WORK. These schedules shall be satisfactory in form and substance to ENGINEER. The schedule of values shall include quantities and UNIT PRICES aggregating the CONTRACT PRICE, and shall subdivide the WORK in component parts in sufficient detail to serve as the basis for progress payments during construction. Upon approval of the schedules of values by ENGINEER, it shall be incorporated in to the form of APPLICATION FOR PAYMENT furnished by ENGINEER.

99.6.14.13.2. **Application for Progress Payment** – at least ten (10) DAYS before each progress payment falls due (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an APPLICATION FOR PAYMENT filled out and signed by CONTRACTOR covering the WORK completed as of the date and the Application and accompanied by such data and schedules as ENGINEER may reasonably require. If payment is

requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at the site or at another location agreed to in writing, the APPLICATION FOR PAYMENT shall also be accompanied by such data, satisfactory to TOWNSHIP, as will establish TOWNSHIP'S title to the material and equipment and protect its interest therein, including applicable insurance. Each subsequent APPLICATION FOR PAYMENT shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the WORK have been applied to discharge in full all of CONTRACTOR'S obligations reflected in prior APPLICATIONS FOR PAYMENT.

99.6.14.13.3. **CONTRACTOR'S Warranty or Title** – CONTRACTOR warrants and guarantees that title to all WORK, materials and equipment covered by any APPLICATION FOR PAYMENT, whether incorporated in the PROJECT or not, will pass to TOWNSHIP at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "LIENS").

99.6.14.13.4. **Approval of Payments**

99.6.14.13.4.1. ENGINEER will, within ten (10) DAYS after receipt of each APPLICATION FOR PAYMENT, either indicate in writing his approval of payment and present the APPLICATION FOR PAYMENT to TOWNSHIP or return the APPLICATION FOR PAYMENT to CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the APPLICATION FOR PAYMENT. TOWNSHIP shall, within ten (10) DAYS of presentation to him of an approved APPLICATION FOR PAYMENT, pay CONTRACTOR the amount approved by ENGINEER.

99.6.14.13.4.2. ENGINEER'S approval of any payment requested in an APPLICATION FOR PAYMENT will constitute a representation by him to TOWNSHIP, based on ENGINEER'S on-site observations of the WORK in progress as an experienced and qualified design professional and on his review of the APPLICATION FOR PAYMENT and the accompanying data and schedules that the WORK has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the WORK is in accordance with the CONTRACT DOCUMENTS (subject to an evaluation of the WORK as a functioning PROJECT upon SUBSTANTIAL COMPLETION, to the results of any subsequent tests called for in the CONTRACT DOCUMENT and any qualifications stated in his approval); and that CONTRACTOR is entitled to payment if the amount approved. However, by approving any such payment ENGINEER will not thereby be deemed to have represented that he made exhaustive or continuous on-site inspections to check the quality or the quantity of the WORK, or that he has reviewed the means, methods, techniques, sequences and procedures of construction, or that he has made any examination to ascertain how or for what purpose CONTRACTOR has used the moneys paid or to be paid to him on account of the CONTRACT PRICE, or that title to any WORK, materials, or equipment has passed to TOWNSHIP free and clear of any Liens.

99.6.14.13.4.3. ENGINEER'S approval of final payment will constitute an additional representation by him to TOWNSHIP that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in Section 99.6.14.13.8. have been fulfilled.

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99.6.14.13.4.4. ENGINEER may refuse to approve the whole or any part of any payment if, in his opinion, it would be incorrect to make such representation to TOWNSHIP. He may also refuse to approve any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect TOWNSHIP from loss because:

99.6.14.13.4.4.1. The WORK is defective, or completed WORK has been damaged requiring correction or replacement,

99.6.14.13.4.4.2. Claims or LIENS have been filed or there is reasonable cause to believe such may be filed,

99.6.14.13.4.4.3. The CONTRACT PRICE has been reduced because of MODIFICATIONS,

99.6.14.13.4.4.4. TOWNSHIP has been required to correct defective WORK or complete the WORK in accordance with Section 99.6.14.12.8. or,

99.6.14.13.4.4.5. Of unsatisfactory prosecution of the WORK including failure to furnish acceptable submittals or to clean up.

99.6.14.13.5. **Substantial Completion**

99.6.14.13.5.1. Prior to final payment, CONTRACTOR may, in writing to TOWNSHIP and ENGINEER, certify that the entire PROJECT is substantially complete and request that ENGINEER issue a certificate of SUBSTANTIAL COMPLETION. Within thirty (30) days, TOWNSHIP, CONTRACTOR and ENGINEER shall make an inspection

of the PROJECT to determine the status of completion. If ENGINEER does not consider the PROJECT substantially complete, he will notify CONTRACTOR in writing giving his reasons therefore. If ENGINEER considers the PROJECT substantially complete, he will prepare and deliver to TOWNSHIP tentative certificate of SUBSTANTIAL COMPLETION, which shall fix the date of SUBSTANTIAL COMPLETION and the responsibilities between TOWNSHIP and CONTRACTOR for maintenance, heat and UTILITIES. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment, and the certificate shall fix the time within which such items shall be completed or corrected, said time to be within the CONTRACT TIME. TOWNSHIP shall have seven (7) DAYS after receipt of the tentative certificate during which he may make written objection to ENGINEER as to any provisions of the certificate such objections, ENGINEER concludes that the PROJECT is not substantially complete, he will within fourteen (14) DAYS after submission of the tentative certificate to TOWNSHIP notify CONTRACTOR in writing, stating his reasons therefore. If, after consideration of TOWNSHIP'S objections, ENGINEER considers the PROJECT substantially complete, he will within said fourteen (14) DAYS execute and deliver to TOWNSHIP and CONTRACTOR a definitive certificate of SUBSTANTIAL COMPLETION (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as he believes justified after consideration of any objections from TOWNSHIP.

99.6.14.13.5.2. TOWNSHIP shall have the right to exclude CONTRACTOR from the PROJECT after the date of SUBSTANTIAL COMPLETION, but TOWNSHIP shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

99.6.14.13.6. **Partial Utilization** – prior to final payment, TOWNSHIP may request CONTRACTOR in writing to permit him to use a specified part of the PROJECT which he believes he may use without significant interference with construction of the other parts of the PROJECT. If CONTRACTOR agrees, he will certify to TOWNSHIP and ENGINEER that said part of the PROJECT is substantially complete and request ENGINEER to issue a certificate of SUBSTANTIAL COMPLETION for that part of the PROJECT. Within a reasonable time thereafter TOWNSHIP, CONTRACTOR, and ENGINEER shall make an inspection of that part of the PROJECT to determine its status of completion. If ENGINEER does not consider that it is substantially complete, he will notify TOWNSHIP and CONTRACTOR in writing giving his reasons therefore. If ENGINEER considers that part of the PROJECT to be subsequently complete he will execute and deliver to TOWNSHIP and CONTRACTOR a certificate to that effect, fixing the date of SUBSTANTIAL COMPLETION as to that part of the PROJECT, attaching thereto a tentative list of items to completed or corrected before final payment and fixing the responsibility between TOWNSHIP and CONTRACTOR for maintenance, heat and UTILITIES as to that part of the PROJECT. TOWNSHIP shall have the right to exclude CONTRACTOR from any part of the PROJECT which ENGINEER has so certified to be substantially complete, but TOWNSHIP shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

99.6.14.13.7. **Final Inspection** – upon written notice from CONTRACTOR that the PROJECT is complete, ENGINEER will make a final inspection with TOWNSHIP 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 measure as are necessary to remedy such deficiencies

99.6.14.13.8. **Final APPLICATION FOR PAYMENT** – after CONTRACTOR has completed all such correction to the satisfaction of ENGINEER and delivered all maintenance and operating instructions, schedules, guarantees, BONDS, certificates of

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inspection and other documents—all as required by the CONTRACT DOCUMENTS, he may make application for final payment following the procedure for progress payments. The final APPLICATION FOR PAYMENT shall be accompanied by such data and schedules as ENGINEER may reasonably require, together with complete and legally effective releases or waivers (satisfactory to TOWNSHIP) of all Liens arising out of the CONTRACT DOCUMENTS and the labor and services performed and the material and equipment furnished thereunder. In lieu thereof and as approved by TOWNSHIP, CONTRACTOR may furnish receipts or releases in full; and affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the WORK for which TOWNSHIP or its property might in any way be reasonable, have been paid or otherwise satisfied; and consent of the SURETY, if any, to final payment. If any SUBCONTRACTOR material man, fabricator, or supplier, fails to furnish a release or receipt in full, CONTRACTOR may furnish a BOND or other collateral satisfactory to TOWNSHIP to indemnify him against any LIEN.

99.6.14.13.9. **Approval of Final Payment**

99.6.14.13.9.1. If, on the basis of his observation and review of the WORK during construction, his final inspection and his review of the final APPLICATION FOR PAYMENT—all as required by the CONTRACT DOCUMENTS, ENGINEER is satisfied that the WORK has been completed and CONTRACTOR has fulfilled all of his obligations under the CONTRACT DOCUMENTS, he will, within ten (10) DAYS after receipt of the final APPLICATION FOR PAYMENT indicate in writing his approval of payment and present the APPLICATION FOR PAYMENT, to TOWNSHIP for payment. Thereupon ENGINEER will give written acceptable notice to TOWNSHIP and b that the WORK is acceptable subject to the provisions of Section 99.6.3.14.14.4.3. Otherwise, he will return the APPLICATION FOR PAYMENT to

CONTRACTOR, indicating in writing his reason for refusing to approve final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the APPLICATION FOR PAYMENT. TOWNSHIP shall, within ten (10) DAYS of representation to him of an approved final APPLICATION FOR PAYMENT, pay CONTRACTOR the amount approved by ENGINEER.

99.6.14.13.9.2. If after SUBSTANTIAL COMPLETION of the WORK final completion thereof is materially delayed through no fault of the CONTRACTOR, and ENGINEER so confirms, TOWNSHIP, shall, upon certification by ENGINEER, and without terminating the AGREEMENT make payment of the balance for WORK not fully completed or corrected is less than the retainage stipulated in the AGREEMENT, and if BONDS have been furnished as required in Section 99.6.3.14.5.1.1., the written consent of the SURETY to the payment of the balance due for that portion of the WORK fully completed and accepted shall be submitted by the CONTRACTOR to the ENGINEER prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

99.6.14.13.10. **CONTRACTOR'S Continuing Obligation** - CONTRACTOR'S obligation to perform the WORK and complete the PROJECT in accordance with the CONTRACT DOCUMENTS shall be absolute. Neither approval of any progress or final payment by ENGINEER, nor the issuance of a certificate of SUBSTANTIAL COMPLETION, nor any payment by TOWNSHIP to CONTRACTOR under the CONTRACT DOCUMENTS, nor any use or occupancy of the PROJECT or any part thereof by TOWNSHIP, nor any act of acceptance by TOWNSHIP nor any failure to do so, nor any of acceptance by TOWNSHIP nor any failure to do so, nor any correction of defective WORK by TOWNSHIP shall constitute an acceptance of WORK not in accordance with the CONTRACT DOCUMENTS.

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99.6.14.13.11. Waiver of Claims

99.6.14.13.11.1. The making and acceptance of final payment shall constitute:

99.6.14.13.11.1.1. A waiver of all claims by TOWNSHIP against CONTRACTOR other than those arising from unsettled Liens, from defective WORK appearing after final inspection pursuant to Section 99.6.3.14.14.7. or from failure to comply with the requirements of the CONTRACT DOCUMENTS or the terms of any special guarantees specified therein, and

99.6.14.13.11.1.2. A waiver of all claims by CONTRACTOR against TOWNSHIP other than those previously made in writing and still unsettled.

99.6.14.14. Suspension of WORK and Termination

99.6.14.14.1. **TOWNSHIP May Suspend WORK** –TOWNSHIP may, at any time and without cause, suspend the WORK or any portion thereof for a period of not more than 90 DAYS by notice in writing to CONTRACTOR and ENGINEER which shall fix the date of which WORK shall be resumed. CONTRACTOR shall resume the WORK on the date so fixed. CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension in the CONTRACT TIME, or both, directly attributable to any suspension if he makes a claim therefore as provided in Section 99.6.14.11. and 99.6.14.12.

99.6.14.14.2. TOWNSHIP May Terminate

99.6.14.14.2.1. If CONTRACTOR is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to make prompt payment to

SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if he disregards the authority of ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then TOWNSHIP may, without prejudice to any other right or remedy and after giving CONTRACTOR and his SURETY seven (7) DAYS written notice, terminate the services of CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment, and machinery thereon owned by CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess shall be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to TOWNSHIP. Such costs incurred by TOWNSHIP shall be determined by ENGINEER and incorporated in a CHANGE ORDER.

99.6.14.14.2.2. Where CONTRACTOR'S services have been so terminated by TOWNSHIP, said terminations shall now affect any rights of TOWNSHIP against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys by TOWNSHIP due CONTRACTOR will not release CONTRACTOR from liability.

99.6.14.14.2.3. Upon seven (7) DAYS written notice to CONTRACTOR and ENGINEER, TOWNSHIP may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate AGREEMENT. In such case, CONTRACTOR shall be paid for all WORK executed and any expense sustained plus a reasonable profit.

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99.6.14.14.3. **CONTRACTOR May Stop WORK or Terminate** if, though no act or fault of CONTRACTOR, the WORK is suspended for a period of 90 DAYS by TOWNSHIP under an order of court or other public authority, or ENGINEER fails to act on any APPLICATION FOR PAYMENT within 30 DAYS of its approval and presentation, then CONTRACTOR may, upon seven (7) DAYS written notice to TOWNSHIP and ENGINEER, terminate the AGREEMENT and recover from TOWNSHIP payment for all WORK executed and any expense sustained plus a reasonable profit. In addition and in lieu of terminating the AGREEMENT, if ENGINEER has failed to act on an APPLICATION FOR PAYMENT or TOWNSHIP has failed to make any payment as aforesaid, CONTRACTOR may upon seven (7) DAYS written notice to TOWNSHIP and ENGINEER stop the WORK until he has been paid all amounts then due.

99.6.14.15. **Miscellaneous**

99.6.14.15.1. **Giving Notice** – whenever any provision of CONTRACT DOCUMENTS required the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to him who gives that notice.

99.6.14.15.2. **Computation of Time** – when any period of time is referred to in the CONTRACT DOCUMENTS by DAYS, it shall be computed to exclude the first and include the last DAY of such period. If the last DAY of any such period falls on a Saturday or Sunday or on a DAY made a legal holiday by the law of the Commonwealth of Pennsylvania pursuant to Section 99.6.3.14.5. of the AGREEMENT; such DAY shall be omitted from the computation.

99.6.14.15.3. **General**

99.6.14.15.3.1. All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law in the Commonwealth of Pennsylvania pursuant to Section 7.16.4. of the AGREEMENT.

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99.6.14.15.3.2. All SPECIFICATIONS, DRAWINGS and copies thereof furnished by ENGINEER shall remain his property. They shall not be used on another PROJECT, and, with the exception of those sets, which have been signed in connection with the execution of the AGREEMENT, shall be returned to him on request upon completion of the PROJECT.

99.6.14.15.3.3. The duties and obligation imposed by these General Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees, and obligations imposed upon CONTRACTOR by Sections 99.6.14.6.17.1., 99.6.14.12.1., 99.6.14.12.7., and 99.6.14.13.3. and the rights and remedies available to TOWNSHIP and ENGINEER thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed or available by law, by special guarantee or by other provisions of the CONTRACT DOCUMENTS.

99.6.14.15.3.4. Should TOWNSHIP or CONTRACTOR suffer injury or damage to his person or property because of any error, omission or act of the other or of any of his employees or agents or others for whose acts he is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

99.6.14.15.3.5. The CONTRACT DOCUMENTS shall be governed by the law of the Commonwealth of Pennsylvania pursuant to Section 7.16.4 of the AGREEMENT.

99.6.14.15.3.6. The terms of this CONTRACT DOCUMENT are not to be construed for the benefit of any person not a party to the AGREEMENT.

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99.6.14.15.3.7. It is understood that if employees of the TOWNSHIP shall perform any acts as for the purpose of discharging the responsibility undertaken by the CONTRACTOR in the CONTRACT, whether requested to perform such acts by the CONTRACTOR or not, such employees of the TOWNSHIP while performing such acts, shall be considered the agents and servants of the CONTRACTOR subject to the exclusive control of the CONTRACTOR.

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99.6.15. SUPPLEMENTARY CONDITIONS

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SUPPLEMENTARY CONDITIONS

This portion of the CONTRACT will be supplied by the ENGINEER.

5.1. **General** – this Section is presented to clarify and amplify Section 14.0 General Conditions as it relates to this CONTRACT and construction of the PROJECT.

99.6.15.2. **Definitions**

99.6.15.2.1. **Inspector** – an employee of the ENGINEER assigned to the site for the purpose of observing the progress of the WORK and to verify measurements of WORK.

99.6.15.2.2. **Supplementary Conditions** – may mean, in addition to this Section 99.6.15., any special PROJECT Conditions detailed in the PROJECT SPECIFICATIONS.

99.6.15.2.3. **Words and Phrases** – where “as shown”, “as indicated”, “as detailed” or words of similar import are used, it shall be understood that reference is made to CONTRACT plans accompanying this document, unless stated otherwise. Where “as directed”, “as required”, “as permitted”, “approved”, “accepted”, or other words of similar import are used, it shall be understood of the ENGINEER is intended unless stated otherwise. As used herein: “provide”, shall be understood to mean “provide complete in place”, that is, furnish and install.

Where masculine pronouns such as “he”, “him”, or other words of similar import are used it shall be understood that they shall include the feminine and neuter equivalents.

99.6.15.2.4. **Standard Specifications** – standard requirements, Section 1 to 12 inclusive are general in scope, being the minimum requirements for completion of the PROJECT.

99.6.15.2.5. **Project Specifications** – special and detailed requirements for execution of this PROJECT, identifies as Section B. In cases of conflict with the Standard Specifications, the PROJECT SPECIFICATIONS shall control.

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99.6.15.2.5. **Supplemental Unit Prices** – where the Proposal provides for requests for Supplemental UNIT PRICES for items of WORK, such prices shall be used as a basis of payment for adjustments necessary due to increase to, or deductions from, the extent of WORK required under a LUMP SUM BID ITEM. The TOWNSHIP may reject any such prices, which are found to be unreasonable or unbalanced and, hence, require reasonable revisions. The use of said Supplemental UNIT PRICES shall be limited to WORK approved by the ENGINEER in writing.

99.6.15.3. **Other Clarifications**

99.6.15.3.1. **Insurance** – the TOWNSHIP will not purchase and maintain separate property insurance, except as may be stated in the PROJECT SPECIFICATIONS.

99.6.15.3.2. **Labor, Materials, and Equipment** – ADD:

99.6.15.3.2.1. It is understood that if employees of the TOWNSHIP shall perform any acts as for the purpose of discharging the responsibility undertaken by the CONTRACTOR in this CONTRACT, whether requested to perform such acts by the CONTRACTOR or not, such employees of the TOWNSHIP while performing such acts, shall be considered the agents and servants of the CONTRACTOR subject to the exclusive control of the CONTRACTOR.

99.6.15.3.2.2. **Overtime** – should overtime, Saturday, Sunday or holiday WORK be approved by the TOWNSHIP, the CONTRACTOR shall reimburse the TOWNSHIP for all costs incurred by the TOWNSHIP'S personnel, the ENGINEER or his Inspectors for time spent on the PROJECT because of such overtime WORK.

99.6.15.3.3. **Permits** – unless otherwise stated in the PROJECT SPECIFICATIONS, the TOWNSHIP has obtained all Permits required by other Regulatory Agencies for construction of the PROJECT.

SUPPLEMENTARY CONDITIONS

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99.6.15.3.4. **PROJECT Representative** – when the ENGINEER provides the services of an Inspector, his duties, as an employee of the ENGINEER shall be to observe the progress of the WORK and compliance with the requirements of the CONTRACT.

The Inspector shall make reports to the ENGINEER. The Inspector shall not be construed as an Agent of the ENGINEER in interpreting this CONTRACT DOCUMENT nor shall he authorize deviations from the requirements of the CONTRACT.

99.6.15.3.5. **Miscellaneous** – the terms of this CONTRACT DOCUMENT are not to be construed for the benefit of any person not a party to the CONTRACT.

99.6.15.4. **Dispute Resolution**

99.6.15.4.1. **Dispute Resolution Agreement** - OWNER and CONTRACTOR hereby agree that 99.6.15.4. of the General Conditions of the AGREEMENT between OWNER and CONTRACTOR is amended to include the following AGREEMENT of the parties:

99.6.15.4.1.1. All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of or relating to the CONTRACT Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this section, 99.6.15.4. This AGREEMENT so to arbitrate and any other AGREEMENT or consent to arbitrate entered into in accordance herewith as provided in Section 99.6.15.4. will be specifically enforceable under the prevailing law of any court having jurisdiction.

99.6.15.4.1.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to the ENGINEER initially for decision in accordance with Section 99.6.15.4.1.2.1. will be made until either (a) the date on which the ENGINEER has rendered a written decision (b) the thirty-first (31) day after the parties have presented their evidence to the ENGINEER if a written decision has not been rendered by the ENGINEER before that date, whichever is earlier. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty (30) days' after the ENGINEER'S written decision. Failure to make a demand for arbitration will result in the ENGINEER'S decision being final and binding upon OWNER and CONTRACTOR. If the ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of the ENGINEER rendered in accordance with Section 99.6.15.4.1.2.1. will be made later than ten (10) days after the party making such demand has delivered written notice of intention to appeal as provided in Section 99.6.15.4.1.2.2.

99.6.15.4.1.3. Notice of the demand for arbitration will be filed in writing with the other party to the AGREEMENT and with the American Arbitration Association, and a copy will be sent to the ENGINEER for information. The demand for arbitration will be made within the thirty (30) day or ten (10) day period specified in Section 99.6.15.4.1.1.2. as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

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99.6.15.4.1.4. Except as provided in Section 99.6.15.4.1.5. below, no arbitration arising out of or relating to the CONTRACT Documents shall include by consolidation, joinder or in any other manner any other person or entity (including the ENGINEER, ENGINEERS Consultant and the officers, directors, agents, employees or consultants of any of them) who is not a party to this CONTRACT unless:

99.6.15.4.1.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and

99.6.15.4.1.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and

99.6.15.4.1.4.3. the written consent of the other person or entity sought to be included and if OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this section; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

99.6.15.4.1.5. Notwithstanding Section 99.6.15.4.1.4. if a claim, dispute or other matter in question between OWNER and CONTRACTOR involves the Work of a Subcontractor as a party to the arbitration between OWNER and CONTRACTOR hereunder then such Subcontractor shall be joined as a party in the arbitration. CONTRACTOR shall include in all subcontracts, a provision whereby the Subcontractor consents to being joined in arbitration between OWNER and CONTRACTOR involving the WORK of such subcontract.

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The consenting to joinder shall not create any claim, right or cause of action in favor of Subcontractor and against OWNER, ENGINEER or ENGINEER'S Consultants that does not otherwise exist.

99.6.15.4.1.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

99.6.15.4.1.7. OWNER and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to the CONTRACT Documents or the breach thereof ("disputes"), to mediation by the American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to Section 99.6.15.4.1. and 99.6.15.4.1.6., unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty (30) and ten (10) day time limits within which to file a demand for arbitration as provided in Sections 99.6.15.4.1.2. and 99.6.15.4.1.3. above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten (10) days after the termination of the mediation. The mediator of any dispute under this provision shall not serve as an arbitrator to any such dispute unless otherwise agreed.

99.6.15.4.1.2. **Dispute Resolution Procedure**

99.6.15.4.1.2.1. The ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. The ENGINEER will review with CONTRACTOR the ENGINEER'S preliminary determinations on such

SUPPLEMENTARY CONDITIONS

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matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). The ENGINEER'S written decision thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten (10) days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other and to the ENGINEER written notice of intention to appeal from the ENGINEER'S decision and: (i) an appeal from the ENGINEER'S is taken within the time limits and in accordance with the procedures set forth in Section 99.6.15.4.1. entered into between OWNER and CONTRACTOR pursuant to Section 99.6.15.4. or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to the ENGINEER'S decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures in Section 99.6.15.4.1.2.1.

99.6.15.4.1.2.1.1. The ENGINEER will be the initial interpreter of the requirements of the CONTRACT Documents and judge of the acceptability of the WORK thereunder. Claims, disputes and other matters relating to the acceptability of the WORK or the interpretation of the requirements of the CONTRACT Documents pertaining to the performance and furnishing of the WORK and Claims, or in respect of changes in the CONTRACT Price or CONTRACT Times will be referred initially to the ENGINEER in writing with a request for a formal decision in accordance with this section. Written notice of each such claim, dispute or other matter will be delivered by the claimant to the ENGINEER and the other party to the AGREEMENT promptly (but in no event

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later than thirty (30) days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to the ENGINEER and other party within sixty (60) days after the start of such occurrence or event unless the ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to the ENGINEER and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless the ENGINEER allows additional time). The ENGINEER will render a formal decision in writing within thirty (30) days after receipt of the opposing party's submittal, if any, in accordance with this section. The ENGINEER'S written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless: (i) an appeal from the ENGINEER'S decision is taken within the time limits and in accordance with the procedures set forth in Section 99.6.15.4.1. entered into between OWNER and CONTRACTOR pursuant to Section 99.6.15.4. , or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from the ENGINEER'S written decision is delivered by OWNER or CONTRACTOR to the other and to the ENGINEER within (30) days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent

jurisdiction to exercise such rights or remedies as the appealing party may have respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty (60) days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.

99.6.15.4.1.2.2.2. When functioning as interpreter and judge under Sections 99.6.15.4.1.2.1. and 99.6.15.4.1.2.2., the ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by the ENGINEER pursuant to Sections 99.6.15.4.1.2.1. and 99.6.15.4.1.2.2. with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the CONTRACT Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Section 99.6.15.4.

Then the OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the CONTRACT Documents or by Laws or Regulations in respect of any dispute.

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99.6.16. ACCEPTABLE FORMS OF SECURITY

[Amended 9-2-08 by Ord. No. 2008]

99.6.16.1. FORM OF IRREVOCABLE LETTER OF CREDIT - Performance

Number: _____, 20__

IRREVOCABLE LETTER OF CREDIT

[Issuer]

TO: Township of Upper St. Clair
1820 McLaughlin Run Road
Upper St. Clair, Pennsylvania 15241

Ladies and Gentlemen:

We hereby issue our Irrevocable Letter Of Credit No. _____ in your favor or the account of [Developer], a [State of Organization] [Organization Type] of [Address] up to the maximum aggregate principal amount of _____ AND ___/100 DOLLARS (\$ _____) available by your drafts at sight drawn on [Issuer] and accompanied by the following:

Written statement purportedly signed by the Township Manager/Secretary that the account customer has not performed in accordance with [Ordinance Number or Development Agreement] as to the completion of the conditions or improvements in [Name of Plan].

Any draft drawn under this credit must be marked "Drawn under [Issuer] Letter of Credit No. _____ dated _____, 20__.

Multiple drawings may be made under this Letter of Credit up to the maximum aggregate principal amount stated above. After each drawing has been paid, the available balance of this Letter of Credit shall be reduced, *pro tanto*, by the amount of each such drawing and such amount shall thereafter cease to be available to you for any further draws. Regardless of whether any drawing is presented, this Letter of Credit expires at this office at the close of business on _____, 20__, or if said date is not a business day, on the first business day following said date (the "Expiration Date").

This Letter of Credit shall be automatically extended for a period of one year from the Expiration Date or any future expiration date hereof, unless, at least ninety (90) days prior to such date, we notify you in writing at the above address, by certified mail that we elect not to renew this Letter of Credit for such additional period. Upon receipt of that notice, you have the right to draw against the amount remaining available under this Letter of Credit by presentation of your signed draft upon us, accompanied by your statement as aforesaid.

This Letter of Credit shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, including the Uniform Commercial Code as adopted in said Commonwealth. This Letter of Credit shall be supplemented by the provisions (to the extent that such provisions are consistent with this Letter of Credit) of the International Standby Practices 1998, International Chamber of Commerce Publication No. 590. Communications with respect to this Letter of Credit shall be addressed to us at _____ [Address], Attention: _____ and specifically referring to the number of this Letter of Credit.

We hereby agree with you that drafts drawn under and in compliance with the terms of this Letter of Credit shall be duly honored if presented to us on or before the above stated Expiration Date or any automatically extended expiration date.

Very truly yours,

[Issuer]

[Authorized Signature]

99.6.16.2. FORM OF IRREVOCABLE LETTER OF CREDIT - Maintenance

Number: _____, 20__

IRREVOCABLE LETTER OF CREDIT

[Issuer]

TO: Township of Upper St. Clair
1820 McLaughlin Run Road
Upper St. Clair, Pennsylvania 15241

Ladies and Gentlemen:

We hereby issue our Irrevocable Letter Of Credit No. _____ in
your favor for the account of **[Developer]**, a **[State of Organization]** **[Organization Type]** of
[Address] up to the maximum aggregate principal amount of _____
_____ AND ___/100 DOLLARS (\$ _____) available by your drafts at
sight drawn on **[Issuer]** and accompanied by the following:

Written statement purportedly signed by the Township Manager/ Secretary that the account
customer has not performed in accordance with **[Ordinance Number]** as to maintenance of
the public improvements in **[Name of Plan]**.

Any draft drawn under this credit must be marked "Drawn under **[Issuer]** Letter of Credit No. _____
_____ dated _____, 20__."

Multiple drawings may be made under this Letter of Credit up to the maximum aggregate principal
amount stated above. After each drawing has been paid, the available balance of this Letter of

Credit shall be reduced, *pro tanto*, by the amount of each such drawing and such amount shall thereafter cease to be available to you for any further draws. Regardless of whether any drawing is presented, this Letter of Credit expires at this office at the close of business on _____, 20____, or if said date is not a business day, on the first business day following said date (the “Expiration Date”).

This Letter of Credit shall be automatically extended for a period of one year from the Expiration Date or any future expiration date hereof, unless, at least ninety (90) days prior to such date, we notify you in writing at the above address, by certified mail that we elect not to renew this Letter of Credit for such additional period. Upon receipt of that notice, you have the right to draw against the amount remaining available under this Letter of Credit by presentation of your signed draft upon us, accompanied by your statement as aforesaid.

This Letter of Credit shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, including the Uniform Commercial Code as adopted in said Commonwealth. This Letter of Credit shall be supplemented by the provisions (to the extent that such provisions are consistent with this Letter of Credit) of the International Standby Practices 1998, International Chamber of Commerce Publication No. 590. Communications with respect to this Letter of Credit shall be addressed to us at _____ [Address] Attention: _____ and specifically referring to the number of this Letter of Credit.

We hereby agree with you that drafts drawn under and in compliance with the terms of this Letter of Credit shall be duly honored if presented to us on or before the above stated Expiration Date or any automatically extended expiration date.

Very truly yours,

[Issuer]

[Authorized Signature]

99.6.16.3. PERFORMANCE BOND (PUBLIC OR PRIVATE IMPROVEMENTS FROM DEVELOPER TO TOWNSHIP)

KNOW ALL MEN BY THESE PRESENTS, that [Developer] as Principal, a _____ [State of Organization] [Organization Type] of [Address] (the "Developer") and [Surety] of [Address] (the "Surety") are held and firmly bound unto The Township of Upper St. Clair, a home rule municipality with offices at 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241 as Obligee (the "Obligee"), in the amount of _____ AND 00/100 DOLLARS (\$) _____) for the payment whereof Developer and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Developer is undertaking the development of property situated in the Township of Upper St. Clair, known as [Name of Plan] for which a plan will be recorded in the Recorder's Office of Allegheny County, Pennsylvania, and has submitted in connection therewith plans for the construction and installation of roads, storm sewers and other public and private improvements, which plans have been approved by the Obligee (said plans are hereinafter called the "Development Plan" and the improvements to be made pursuant thereto are hereinafter called the "Improvements"); and

WHEREAS, the Developer has agreed to construct and install the Improvements pursuant to the terms of the Tentative and Final Development Agreement, dated _____, 20__ with the Obligee (the "Township Development Agreement"), and further agrees to install the Improvements in conformance with the Development Plans and the Township Development Agreement, and the Public and Private Improvements Code of the Township of Upper St. Clair (the "Code").

NOW, THEREFORE, the condition of this obligation is such that if Developer complies with all of the provisions of the Code and the Development Plan, and the Obligee accepts and/or approves the Improvements, as the case may be, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Obligee shall have the right to approve or disapprove modifications of this bond, upon application of the Developer, as follows:

1. Reduction in bond amounts not to exceed a total of 50 percent;
2. Granting of alterations or extensions of time;
3. Approving minor changes in construction design.

The Surety hereby waives notice of any alteration or extension of time made by the Obligee.

If Developer does not cause the appropriate and necessary Improvements to be installed pursuant to the Township Development Agreement, or if any portion of the Improvements shall not be accepted by Obligee and/or approved by Obligee, as the case may be, or if Developer fails to comply with the provisions of the Code or Development Plan, the Surety may promptly remedy the reasons for such non-approval or rejection, or shall promptly:

1. Complete or cause the completion of the Improvements in accordance with the terms and conditions of the Township Development Agreement, or
2. Pay to the Obligee the amount of _____ AND 00/100 DOLLARS (\$ _____) as full payment of Surety's obligation under this Bond.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which the Obligee notifies the Developer that the Improvements shall not be approved by Obligee or have not been completed in accordance with the Township Development Agreement. No right of action shall accrue on the Bond to or for the use of and person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

This Performance Bond is signed and sealed this _____ day of _____
20__.

WITNESS:

DEVELOPER:

_____	By: _____ (SEAL)
Name:	Name:
	Title:

TEMPLATE
 Township of Upper St. Clair

WITNESS:

SURETY:

_____	By: _____ (SEAL)
Name:	Name:
	Title:

TO BE REPRODUCED
 ON INSTITUTION
 LETTERHEAD

99.6.16.4. PERFORMANCE BOND (GRADING PERMITS)

KNOW ALL MEN BY THESE PRESENTS, that [**Applicant**] as Principal, a [**State of Organization**] [**Organization Type**] of [**Address**] (the "**Applicant**") and [**Surety**] of [**Address**] (the "**Surety**") are held and firmly bound unto The Township of Upper St. Clair, a home rule municipality with offices at 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241 as Obligee (the "**Obligee**"), in the amount of _____ AND 00/100 DOLLARS (\$ _____) for the payment whereof Applicant and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Obligee has authorized Applicant's grading plans and specifications for the property located at [**Address**] by issuance of a Grading Permit # _____ dated _____, 20____ (the "**Township Approval**"); and

WHEREAS, Township Approval requires Applicant to complete grading on the site (the "**Grading**") pursuant to the Township of Upper St. Clair Code Section 71, "Grading" (the "**Grading Code**")

NOW, THEREFORE, the condition of this obligation is such that if Applicant complies with all of the provisions of the Grading Code, and the Obligee approves the Grading by the issuance of a Grading Certificate, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Obligee shall have the right to approve or disapprove modifications of this bond, upon application of the Applicant, as follows:

1. Reduction in bond amounts not to exceed a total of 50 percent;
2. Granting of alterations or extensions of time;

- 3. Approving minor changes in the grading plans and specifications.

The Surety hereby waives notice of any alteration or extension of time made by the Obligee.

If Applicant does not cause the Grading to be completed, or if the Grading shall not be approved by Obligee by the issuance of a Grading Certificate, or if Applicant fails to comply with the provisions of the Grading Code, the Surety may promptly remedy the reasons for such non-approval or rejection, or shall promptly:

- 1. Complete or cause the completion of the Grading in accordance with the terms and conditions of Township Approval, or
- 2. Pay to the Obligee the amount of _____ AND 00/100 DOLLARS (\$_____) as full payment of Surety's obligation under this Bond.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which the Obligee notifies the Applicant that the Grading shall not be approved by Obligee or has not been completed in accordance with the Township Approval.

No right of action shall accrue on the Bond to or for the use of and person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

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This Performance Bond is signed and sealed this _____ day of _____
20____.

WITNESS:

APPLICANT:

TEMPLATE

Name:

By: _____ (SEAL)
Name:

Township of Upper St. Clair

Title:

WITNESS:

SURETY:

TO BE REPRODUCED

Name:

By: _____ (SEAL)
Name:

ON INSTITUTION

Title:

LETTERHEAD

99.6.16.5. PERFORMANCE BOND/DUAL OBLIGEE (WHERE DEVELOPER IS NOT PROVIDING BOND; CONTRACTOR FOR DEVELOPER IS PROVIDING BOND)

KNOW ALL MEN BY THESE PRESENTS, that [**Contractor**] as Principal, a [**State of Organization**] [**Organization Type**] of [**Address**] (the "**Contractor**") and [**Surety**] of [**Address**] (the "**Surety**") are held and firmly bound unto The Township of Upper St. Clair, a home rule municipality with offices at 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241 (the "**Township**") as Obligee, and to [**Developer**], a [**State of Organization**] [**Organization Type**] of [**Address**] (the "**Developer**") (hereinafter the Township and Developer are sometimes collectively the "**Obligee**"), in the amount of _____ AND 00/100 DOLLARS (\$_____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Developer is undertaking the development of property situated in the Township of Upper St. Clair, known as [**Name of Plan**] for which a plan will be recorded in the Recorder's Office of Allegheny County, Pennsylvania, and has submitted in connection therewith plans for the construction and installation of roads, storm sewers and other public and private improvements, which plans have been approved by the Obligee (said plans are hereinafter called the "**Development Plan**" and the improvements to be made pursuant thereto are hereinafter called the "**Improvements**"); and

WHEREAS, the Developer has agreed to construct and install the Improvements pursuant to the terms of the [**Tentative and Final Development Agreement or Preliminary and Final Development Agreement**], dated _____, 20__ with the Township (the "**Township Development Agreement**"), and further agrees to install the Improvements in conformance with the Development Plans and the Township Development Agreement, and the Public and Private Improvements Code of the Township of Upper St. Clair (the "**Code**").

WHEREAS, Developer was unable to provide a Bond as security as required by the Code, and Contractor has provided the Security required by the Code in the form of this Bond.

NOW, THEREFORE, the condition of this obligation is such that if Contractor complies with all of the provisions of the Code and the Development Plan, and the Township accepts and/or approves the Improvements, as the case may be, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Oblige shall have the right to approve or disapprove modifications of this bond, upon application of the Developer, as follows:

1. Reduction in bond amounts not to exceed a total of 50 percent;
2. Granting of alterations or extensions of time;
3. Approving minor changes in construction design.

The Surety hereby waives notice of any alteration or extension of time made by the Oblige.

If Contractor does not cause the appropriate and necessary Improvements to be installed pursuant to the Township Development Agreement, or if any portion of the Improvements shall not be accepted by Township and/or approved by Township, as the case may be, or if Contractor fails to comply with the provisions of the Code or Development Plan, the Surety may promptly remedy the reasons for such non-approval or rejection, or shall promptly:

1. Complete or cause the completion of the Improvements in accordance with the terms and conditions of the Township Development Agreement, or
2. Pay to the Township the amount of _____
 _____ AND 00/100 DOLLARS (\$ _____) as full payment of

Surety's obligation under this Bond. No payment shall be made by Surety to the Developer without written consent of the Township.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which the Obligeo notifies the Contractor that the Improvements shall not be approved by Obligeo or have not been completed in accordance with the Township Development Agreement.

No right of action shall accrue on the Bond to or for the use of and person or corporation other than the Obligeo named herein or the heirs, executors, administrators or successors of the Obligeo.

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This Performance Bond is signed and sealed this _____ day of _____
20____.

WITNESS:

CONTRACTOR:

Name:

By: _____(SEAL)
Name:
Title:

TEMPLATE

WITNESS:

Township of Upper St. Clair

SURETY:

Name:

By: _____(SEAL)
Name:

TO BE REPRODUCED
ON INSTITUTION
LETTERHEAD

99.6.16.6. MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that [**Developer**] as Principal, a [**State of Organization**] [**Organization Type**] of [**Address**] (the "**Developer**") and [**Surety**] of [**Address**] (the "**Surety**") are held and firmly bound unto The Township of Upper St. Clair, a home rule municipality with offices at 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241 as Obligee (the "Obligee"), in the amount of _____ AND 00/100 DOLLARS (\$ _____) for the payment whereof Developer and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Obligee has authorized by [**Ordinance Number**] dated _____ 20____ (the "**Township Approval**") Developer's development of the property situated in the Township known as [**Name of Plan**] for which a plan [**will be or has been**] recorded in the Recorder's Office of Allegheny County, Pennsylvania, and in connection therewith plans have been submitted for the construction and installation of roads, storm sewers and other public and private improvements, which plans have been approved by the Obligee (said plans are hereinafter called the "**Development Plan**" and the improvements to be made pursuant thereto are hereinafter called the "**Improvements**"); and

WHEREAS, Township Approval requires Developer to maintain all necessary and appropriate Improvements for the development.

NOW, THEREFORE, the condition of this obligation is such that if the Developer shall for a period of _____ year(s) from _____, 20__ (the "**Maintenance Period**") replace and make good all defective workmanship and materials in connection with the construction of the Improvements done under the Township Approval, as referred to, then this obligation shall become void, otherwise it shall be and remain in full force and effect. If such defective materials or workmanship occur within said period Obligee shall give Developer and Surety written notice thereof within one-hundred and eighty (180) days after discovery and Developer or Surety shall

replace such defective material or workmanship within thirty (30) days pursuant to [**Ordinance Number**]. When each such replacement is made to the satisfaction of the Oblige, the obligation of the Developer and Surety shall be discharged as to such replacement. Any such repairs or replacements which are made pursuant hereto shall in like manner be subject to the terms and conditions herein.

Any suit under this Bond must be instituted before the expiration of twenty-four (24) months after the expiration of the Maintenance Period provided for herein.

No right of action shall accrue on the Bond to or for the use of and person or corporation other than the Oblige named herein or the heirs, executors, administrators or successors of the Oblige.

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TO BE REPRODUCED
ON INSTITUTION
LETTERHEAD

This Maintenance Bond is signed and sealed this _____ day of _____ 20__.

WITNESS:

DEVELOPER:

_____ (SEAL)

Name:

Name:

Title:

TEMPLATE
Township of Upper St. Clair

WITNESS:

SURETY:

_____ (SEAL)

Name:

Name:

Title:

TO BE REPRODUCED
ON INSTITUTION
LETTERHEAD

99.6.16.7. ESCROW AGREEMENT

This Escrow Agreement (the "**Agreement**"), dated this _____ day of _____, 20__ by and among [**Developer**], a [**State of Organization**] [**Organization Type**] of [**Address**] (the "**Developer**").

AND

The Township of Upper St. Clair, a home rule municipality, having its principal address at 1820 McLaughlin Run Road, Upper St. Clair, Pennsylvania 15241, (the "**Township**").

AND

[**Bank**] with its principal address at [**Address**] (the "**Lender**").

WITNESSETH:

WHEREAS, the Developer is undertaking the development of property situated in the Township, known as [**Name of Plan**] for which a plan will be recorded in the Recorder's Office of Allegheny County, Pennsylvania, and has submitted in connection therewith plans for the construction and installation of roads, storm sewers and other public and private improvements, which plans have been approved by the Township (said plans are hereinafter called the "**Development Plan**" and the improvements to be made pursuant thereto are hereinafter called the "**Improvements**"); and

WHEREAS, the Developer has agreed to construct and install the Improvements pursuant to the terms of the [**Tentative and Final Development Agreement or Preliminary and Final Development Agreement**], dated _____, 20__ with the Township (the "**Township Development Agreement**"), and

WHEREAS, the Lender has granted a development loan (the "**Loan**") to Developer to fund *inter alia*, the construction and installation of the Improvements; and

WHEREAS, the parties agree that the sum of _____
 AND ___/100 DOLLARS (\$_____) constitutes the amount of the security which the
 Township requires of the Developer to guarantee completion of the Improvements (the "**Pledged
 Funds**"); and

WHEREAS, the Developer and Lender desire to insure the completion of the construction
 and installation of the Improvements according to the Development Plans and the Township
 Development Agreement; and

WHEREAS, the Lender covenants that it will act as escrow agent of the Pledged Funds
 herein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter stated and
 intending to be legally bound hereby, the parties agree as follows:

1. Preamble. The foregoing preamble clauses are incorporated herein by reference
 thereto.
2. Improvements. The Developer agrees to install the Improvements in conformance
 with the Development Plans and the Township Development Agreement, and the Township's Public
 and Private Improvements Code.
3. Funds; Account. Lender has on deposit a sum in an amount equal to the Pledged
 Funds reserved from the Loan granted to Developer which sum is hereby pledged to the Township
 to guarantee the completion of the Improvements as set forth in the Township Development
 Agreement. Lender agrees to deposit the Pledged Funds into an escrow account (the "**Escrow
 Account**") with any release of the Pledged Funds occurring only after the Lender has received
 written authorization by the Township to release a specific amount from the Escrow Account.
4. Title. The Escrow Account shall be titled as follows: "Escrow Account for the
 benefit of the Township of Upper St. Clair [**Name of Plan**]" Both Developer and Lender covenant

that the Escrow Account shall not be subject to the claims of any creditors of Developer other than the Township, and shall not constitute a part of Developer's estate for the purpose of any bankruptcy or insolvency proceeding which touches or concerns Developer.

5. Interest. Monies on deposit in the Escrow Account shall earn interest, which said interest shall be retained in the Escrow Account, made a part of the Pledged Funds, and applied and disbursed in accordance with this Agreement.

6. Releases. The Township hereby agrees to permit the construction and installation of said Improvements forthwith and to permit partial releases of funds from the Escrow Account upon written request by the Developer after each phase of the Improvements is completed subject to the provisions of Chapter 114 of the Township Code, including Sections 114.17 and 114.04 thereof. No Pledged Funds shall be released from the Escrow Account without the Township's written authorization to the Lender.

7. Default. If after _____, 20____, [**or at any time pursuant to Section _____ of the Township Development Agreement,**] Improvements are not constructed and installed, and approved by the Township, then and in that event the Township may demand, and in the event of such demand, shall immediately receive, payment of any balance remaining in the Pledged Funds. If the Township draws on the Escrow Account, it shall be under no obligation to complete the subject Development or the Improvements.

8. Defeasance. Upon payment in full of the costs of the Improvements as certified by the Developer and approved by the Township in writing, the obligation of Lender to the other parties will cease and the Escrow Account shall be terminated subject to the provisions of Chapter 114 of the Township Code, including Sections 114.17 and 114.23 thereof.

9. Payment to Township. In the event the Township demands payment under this Agreement, Lender shall, without duty of inquiry to the Developer, immediately make the requested payment to the Township and Developer releases Lender from any liability or claim.

10. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been duly given when addressed and mailed by registered or certified United States mail to the Developer, the Lender or the Township, as the case may be, at the following addresses, or to such other places as either of the parties may for themselves designate in writing, from time to time, for the purpose of receiving notices pursuant hereto:

DEVELOPER:

LENDER:

TOWNSHIP: The Township of Upper St. Clair

Community Development Department

1820 McLaughlin Run Road

Upper St. Clair, PA 15241

11. Attachments. The Exhibit attached to this Agreement and the matters contained therein are incorporated herein and deemed a part hereof as if fully recited in this Agreement.

12. Law Governing. This Agreement shall be construed insofar as possible in accordance with the laws of the Commonwealth of Pennsylvania.

13. Successors and Assigns. The words "Developer", "Lender" and "Township" include singular and plural, individual or corporate, and their respective heirs, successors and assigns, as the case may be.

14. Amendments. This Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by all parties.

15. Severability. If any term or provision of this Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, properties and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Capitalized Terms. Capitalized terms used herein shall have the meanings ascribed to them in this Agreement.

17. Captions. The paragraph captions are for convenience only and in no way limit or alter the terms and conditions of this Agreement.

18. Counterparts. This agreement may be executed in different counterparts each of which executed by a party hereto shall be regarded as an original, and all such counterparts shall constitute one Agreement

19. Subject to. This Agreement is subject to the terms of the Township Development Agreement and the Township Code, including the provisions of Chapter 99 (Public and Private Improvements) and Chapter 114 (Subdivision and Land Development) and that the terms of the Township Development Agreement and the Code are incorporated by reference and supercede the provisions of this Agreement.

20. Integration Clause. This Agreement constitutes the entire contract between the parties hereto and there are no other understandings, oral or written, relating to the subject matter hereof other than those specifically incorporated by reference herein.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

WITNESS:

DEVELOPER:

[Name]

Name:

Title

Township of Upper St. Clair

WITNESS:

LENDER:

[Name]

Name:

Title:

WITNESS:

TOWNSHIP:

THE TOWNSHIP OF UPPER ST. CLAIR, a
home rule municipality

By: _____

Name:

Title:

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