01-1265-CD
CONTINENTAL CONSTRUCTION, INC. -vs- WALLACETON-BOGGS MUNICIP.
AUTHORITY

Continental Construction vs. Wallaceton-Boggs Municipal Authority, Sweetland Engineering && Associates, Inc.

Civil Other

Date		Judge
08/03/2001	Filing: Civil Complaint Paid by: Julee Marzella Receipt number: 1829356 Dated: 08/03/2001 Amount: $80.00 (Cash) One CC Attorney Naddeo Two CC Attorney McKeon	No Judge
	Exhibit A to Complaint, filed by Kevin J. McKeon, Esq.	No Judge
09/10/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
10/08/2001	Answer to Complaint and Counterclaim. Filed by s/James A. Naddeo, Esq. Cert of Svc 1 cc Atty Naddeo	No Judge
11/08/2001	Answer to Counterclaim. Filed by s/Kevin J. McKeon, Esq. Verification. s/Julee Marzella Filed by Frances Bowers 4 cc to Bowers	No Judge
12/07/2001	Petition to Join an Additional Defendant. Filed by s/James A. Naddeo, Esq. 2 cc to Atty	No Judge
12/10/2001	RULE, AND NOW, this 10th day of Dec., 2001, Issued upon Defendant and Sweetland Engineering & Associates, Inc., Returnable for written Response on the 31st of Dec., 2001. by the Court, s/JKR,JR.,P.J. 2 cc Atty Naddeo	John K. Reilly Jr.
12/13/2001	Amended Rule to Petition to Join Additional Defendant. by the Court, s/JKR,JR.,P.J. 2 cc Atty Naddeo	John K. Reilly Jr.
12/14/2001	Certificate of Service, Petition to Join an Additional Defendant and Amended Rule to Petition to Join Additional Defendant upon Kevin J. McKeon, Esq. and Sweetland Engineering & Associates, Inc. Filed by s/James A. Naddeo, Esq. 2 cc Atty Naddeo	John K. Reilly Jr.
12/31/2001	Response to Rule for Petition to Join Additional Defendant. Filed by s/Francis X. McTiernan, Jr., Esq. Cert of Svcv no cc	John K. Reilly Jr.
01/02/2002	Answer to Petition to Join Additional Defendant. Filed by s/Kevin J. McKeon, Esq. Verification s/Kevin J. McKeon, Esq. Cert of Svc no cc	John K. Reilly Jr.
04/05/2002	Amended Answer to Petition to Join Additional Defendant. Filed by s/Kevin J. McKeon, Esq. Verification s/Kevin J. McKeon, Esq. Certificate of Service 2 cc to atty.	John K. Reilly Jr.
04/29/2002	Praecipe to Enter Appearance on behalf of Defendant, WALLACETON-BOGGS MUNICIPAL AUTHORITY. s/Rolf E. Kroll, Esq. s/Shaun J. Mumford, Esq. Certificate of Service 1 cc Atty Mumford Copy CA	John K. Reilly Jr.
	OPINION AND ORDER, NOW, this 29th day of April, 2002, re: Petition to Join Sweetland Engineering & Associates, Inc. as an additional defendant is GRANTED. by the Court, s/JKR,JR,P.J. 1 cc D. Mikesell, K. McKeon, R. Kroll, and S. Mumford	John K. Reilly Jr.
05/07/2002	Praecipe To Withdraw Appearance on Behalf of the Defendant, WALLACETON-BOGGS MUNICIPAL AUTHORITY. filed by s/JAMES A. NADDEO, ESQ. no cc	John K. Reilly Jr.
05/16/2002	Praecipe for Writ of Summons to Join Addional Defendant, filed by Atty. Kroll 2 Cert. w/writs to sheriff and 1 Cert. w/writ to Atty. Add Sweetland Engineering & Associates, Inc. as Additional Defendant.	John K. Reilly Jr.
08/07/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	John K. Reilly Jr.

Civil Other

Date		Judge
10/04/2002	Praecipe to Withdraw/Enter Appearance, filed by Atty. McKeon No Cert. copies. Withdraw of Kevin J. McKeon and enter the appearance of Kevin J. McKeon.	John K. Reilly Jr.
01/23/2003	Proof of Service of Discovery Requests, filed by Atty. McKeon No Cert. Served copy of Plaintiff's Request for Admissions and etc. on Atty. Kroll & Naddeo	John K. Reilly Jr.
03/05/2003	Response Of Defendant To Plaintiff's Request For Admissions, Documents and Interrogatories - Set I. filed by s/Rolf E. Kroll, Esquire Verification s/Chris Bungo Certificate of Service no cc	John K. Reilly Jr.
05/12/2003	Proof of Service of Discovery Requests upon: Rolf E. Kroll, Esq., Shaun J. Mumford, Esq. and Francis X. McTiernan, Jr., Esq. filed by s/Kevin J. McKeon, Esquire Certificate of Service no cc	John K. Reilly Jr.
05/27/2003	Motion For Protective Order. filed by s/Paul M. Mannix, Esquire Certificate of Service no cc	John K. Reilly Jr.
05/28/2003	ORDER, NOW, this 27th day of May, 2003, re: Additional Defendant's Motion for Protective Order, is scheduled for the 30th day of May, 2003, at 9:00 a.m. by the Court, s/JKR,JR., P.J. 3 cc Atty Mctiernan	John K. Reilly Jr.
05/30/2003	ORDER, NOW, this 30th day of May, 2003, re: Motion for Protective Order filed on behalf of Additional Defendant Sweetland Engineering & Associates, Inc., Motion be and is hereby GRANTED to the extent that Sweetland Engineering & Associates, Inc., shall be and is hereby given until August 15, 2003, to fully and completely respond to all discovery demands made by Plaintiff Continental Construction, Inc. by the Court, s/JKR,JR.,P.J. 1 cc Atty McTiernan, McKeon, Kroll	John K. Reilly Jr.
08/18/2003	Notice Of Service Of Defendant Sweetland Engineering & Associates, Inc.'s Objections, Responses and Answers to Plaintiff's Requests for Admissions, Documents and Interrogatories, Set 1 upon Counsel. filed by s/Paul M. Mannix, Esquire Certificate of Service no cc	John K. Reilly Jr.
11/21/2003	Proof Of Service Of Discovery Requests, upon: Rolf E. Kroll, Esq., Francis X. McTiernan, Jr.,Esq. filed by, s/Kevin J. McKeon Certificate of Service no cc	John K. Reilly Jr.
	Proof Of Service Of the Plaintiff's Request for Production of Documents Directed to Additional Defendant, Set II, upon: Rolf E. Kroll, Esquire and Francis X. Tiernan, Jr., Esquire filed by, s/Kevin J. McKeon Certificate of Service no cc	John K. Reilly Jr.
01/09/2004	Praecipe For Rule To File Complaint To Join. filed by, s/Paul M. Mannix, Esquire no cc Rule issued to Atty Mannix	John K. Reilly Jr.
01/27/2004	Notice of Service of Rule To File Complaint to Join. Servied upon Rolf E. Kroll, Esquire. filed by, s/Paul M. Mannix, Esquire no cc	John K. Reilly Jr.
04/21/2004	Joinder Complaint of Defendant, Wallaceton-Boggs Municipal Authority, Against Additional Defendant, Sweetland Engineering. filed by, s/Rolf E. Kroll, Esquire Certificate of Service 2 cc to Atty	John K. Reilly Jr.
05/17/2004	Answer, New Matter andNew Matter Pursuant to Pa.R.C.P. 2252(D) To Joinder Complaint of Defendant. filed bym, s/Jeffrey A. Kubay, Esquire Verification s/Christina M. Fetzer Certificeate of Service no cc	John K. Reilly Jr.

Civil Other

Date		Judge
08/30/2004	Praecipe For Entry Of Appearance: filed by s/ Barry A. Kronthal Esq. on behalf of Defendant. Certificate of Service upon Kevin J. McKeon, Esq. and Francis X. McTiernan, Jr., Esquire. No CC.	John K. Reilly Jr.
09/24/2004	Praecipe For Change of Address, for counsel of record to Plaintiff, Continental Construction, Inc., in the above-referenced action: Kevin J. McKeon, Esq. Watt, Tieder, Hoffar & Fitzgerald, LLP 8405 Greensboro Drive, Suite 100 McLean, Virginaia 22102 (703) 749-1000 (703) 893-8029 Fax Filed by s/ Kevin J. McKeon, Esquire. No CC. Certificate of Service, upon Rolf E. Kroll, Esquire; and Francis X. Mctiernan, Jr., Esquire.	John K. Reilly Jr.
11/29/2004	Motion of Defendnat, Wallaceton-Boggs Municipal uthority, For Leave of Court to File a New Matter and Amended Counter-Claim to the Complaint of Plaintiff, Continental Constgruction, Inc. filed by Atty. Kroll 1 Cert. to Atty.	John K. Reilly Jr.
12/06/2004	Rule: and Now, this 6th day of Dec., 2004, upon consideration of the attached Motion of Defendant, Wallaceton-Boggs municipal Authority, for Leave of court to File a New matter and Amended Counter-Claim, a Rule is hereby issued upon Plaintiff, Continental Construction, Inc., to show cause why the motion should not be granted. Rule returnable the 29th day of December, 2004, for filing written response. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Kroll w/memo Re: Service.	Fredric Joseph Ammerman
12/10/2004	Additional Defendant Sweetland Engineering & Associates, Inc.'s Notice of Service of First Set of Interrogatories and First set of Request for Production of Documents Directed to Plaintiff, filed by s/ Paul M. Mannix, Esquire. No CC	Fredric Joseph Ammerman
12/13/2004	Affidavit of Service filed, copy of Rule, on all counsel of record by mail on the 9th of December, 2004. filed by s/ Rolf E. Kroll, Esquire. No CC	Fredric Joseph Ammerman
12/29/2004	Plaintiff's Answer to Defendant's Motion for Leave of Court to File New Matter and Amended Counterclaim, on behalf of Plaintiff Continental Construction, Inc. Filed by s/ Kevin J. McKeon, Esquire. No CC	Fredric Joseph Ammerman
03/21/2005	Motion For Leave to File Amended Complaint, filed by s/ Kevin J. McKeon, Esquire. 2CC Atty McKeon	Fredric Joseph Ammerman
03/22/2005	Rule, AND NOW, this 22nd day of March, 2005, upon consideration of Plaintiff's Motion for Leave of Court to File Amended Complaint, Rule returnable the 12th of April 2005, for filing written responses. Fredric J. Ammerman, Judge. 2CC Atty. McKeon	Fredric Joseph Ammerman
03/30/2005	Additional Defendant Sweetland Engineering & Associates, Inc.'s Opposition to Plaintiff's Motion For Leave to File An Amended Complaint, filed by s/ Paul T. Mannix, Esquire. No CC	Fredric Joseph Ammerman
04/12/2005	Proof of Service of Discovery requests. Cert copies of Plaintiff's Request for Documents were served on April 6th, 2005. Cert of service foregoing proof of service. Filed by Kevin McKeon, Esq. No CC.	Fredric Joseph Ammerman
	Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22. Filed by s/ Kevin J. McKeon, Esquire. No CC	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2001-01265-CD

Current Judge: Fredric Joseph Ammerman

Continental Construction vs. Wallaceton-Boggs Municipal Authority, Sweetland Engineering && Associates, Inc.

Civil Other

Date		Judge
04/12/2005	Notice of Intent to Serve Subpoenas, filed by s/ Kevin J. McKeon, Esquire. No CC	Fredric Joseph Ammerman
05/20/2005	Order, Now, to wit, on this 18th day of May, 2005, it is hereby ordered that oral argument on plaintiff's Motion for Leave to File Amended Complaint is scheduled for the 8th day of June, 2005, at 10:00 in Courtroom No. 1. /s/ Fredric J. Ammerman, President Judge. 3CC Atty. McKeon	Fredric Joseph Ammerman
05/25/2005	Praecipe For Entry of Appearance, filed by Atty. R. Bell no cert. copies. Entered appearance on behalf of Plaintiff as co-counsel with Kevin J. McKeon.	Fredric Joseph Ammerman
05/31/2005	Certificate of Service, Copy of Court's Order dated May 8, 2005, scheduling oral argument on Plaintiff's Motion for Leave to File Amended Complaint served upon Rolf Kroll, Esq., and Paul Mannix, Esq. Filed by Kevin J. McKeon. No CC.	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Continental Construction vs. Wallaceton-Boggs Municipal Authority, Sweetland Engineering && Associates, Inc.

Civil Other

Date		Judge
04/12/2005	Notice of Intent to Serve Subpoenas, filed by s/ Kevin J. McKeon, Esquire. No CC	Fredric Joseph Ammerman
05/20/2005	Order, Now, to wit, on this 18th day of May, 2005, it is hereby ordered that oral argument on plaintiff's Motion for Leave to File Amended Complaint is scheduled for the 8th day of June, 2005, at 10:00 in Courtroom No. 1. /s/ Fredric J. Ammerman, President Judge. 3CC Atty. McKeon	Fredric Joseph Ammerman
05/25/2005	Praecipe For Entry of Appearance, filed by Atty. R. Bell no cert. copies. Entered appearance on behalf of Plaintiff as co-counsel with Kevin J. McKeon.	Fredric Joseph Ammerman
05/31/2005	Certificate of Service, Copy of Court's Order dated May 8, 2005, scheduling oral argument on Plaintiff's Motion for Leave to File Amended Complaint served upon Rolf Kroll, Esq., and Paul Mannix, Esq. Filed by Kevin J. McKeon. No CC.	Fredric Joseph Ammerman
06/09/2005	Order, NOW, this 8th day of June, 2005, following argument on Plaintiff's Motion for Leave to File Amended Complaint, it is the ORDER of this Court that additional Defendant have no more than 10 days from this date in which to supply the Court with appropriate letter brief. Counsel for the Plaintiff shall have no more than 10 days following his receipt of the same to reply. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty: K. McKeon, R. Bell, R. Kroll, S. Mumford, B. Kronthal, F. McTiernan	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2001-01265-CD

Current Judge: Fredric Joseph Ammerman

Continental Construction vs. Wallaceton-Boggs Municipal Authority, Sweetland Engineering && Associates, Inc.

Civil Other

Date	Selected Items	Judge
07/11/2005	Order, this 7th day of July, 2005, ORDERED that Plaintiff's Motion for Leave to File an Amended Complaint be and is hereby granted. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: McKeon, Kroll, R. Bell, Mumford, Kronthal, McTiernan	Fredric Joseph Ammerman
08/12/2005	Amended Complaint, filed by s/ Kevin J. McKeon Esquire. 2CC Atty.	Fredric Joseph Ammerman
09/08/2005	Additional Defendant Sweetland Engineering & Associates, Inc's Answer, New Matter and Matter Pursuant to Rule 2252 (d) to Plaintiff's Amended Complaint filed by s/ Jeffrey A. Kubay Esq. No CC.	Fredric Joseph Ammerman
09/26/2005	Certificate of Merit, filed on behalf of Plaintiff regarding Sweetland Engineering & Associates, Inc., filed by Atty.McKeon 1 Cert. to Atty.	Fredric Joseph Ammerman
11/15/2005	Certificate of Merit as to Sweetland Engineering, filed by Atty. Kroll 1 Cert. to Atty.	Fredric Joseph Ammerman
03/02/2006	Additional Defendant's motion For Protective Order, filed by s/ Jeffrey A. Kubay, Esquire. No CC	Fredric Joseph Ammerman
03/08/2006	Order, NOW, this 7th day of March, 2006, Ordered that argument on Attorney Mannix's Motion For Protective Order in the above matter has been scheduled for Wednesday, March 15, 2006 at 11:00 a.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC Atty. Kubay	Fredric Joseph Ammerman
	Praecipe For Expedited Disposition of Additional Defendant Sweetland's Motion For Protective Order, filed by s/ Jeffrey A. Kubay, Esquire No CC	Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Palisades Collection LLC
Providian National Bank

Vs. **No. 2005-00140-CD**
Tammy Peters

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on March 6, 2006, marked:

Settled, Satisfied and Discontinued

Record costs in the sum of $27.00 have been paid in full by Wolpoff & Abramson.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 6th day of March A.D. 2006.

_____
William A. Shaw, Prothonotary

Clearfield County Court of Common Pleas

ROA Report

Case: 2001-01265-CD

Current Judge: Fredric Joseph Ammerman

Continental Construction vs. Wallaceton-Boggs Municipal Authority, Sweetland Engineering && Associates, Inc.

Civil Other

Date	Selected Items	Judge
03/10/2006	Certification Pursuant to LR 208.2(e). Filed by s/ Rolf E. Kroll, Esquire. 2CC Atty.	Fredric Joseph Ammerman
	Defendant's Motion For Protective Order, filed by s/ Filed by s/ Rolf E. Kroll, Esquire. No CC	Fredric Joseph Ammerman
	Scheduling Order Now, this 10th day of March, 2006, it is the ORDER of this Court that oral argument on Additional Defendant's Motion for Protective Order in the above-captioned matter has been scheduled for Wednesday, March 15, 2006 at 11:00 am via teleconference. Additional Defendant Sweetland's counsel will coordinate said teleconference among the Court and counsel of record. It is the responsibility of Additional Defendant Sweetland's counsel to serve certified copy of scheduling Order on all parties. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 5CC to atty Kubay and 1 faxed copy to Atty Kubay.	Fredric Joseph Ammerman
	Amended Scheduling Order, NOW, this 10th day of March, Ordered that Oral argument on Additional Defendant's Motion for Protective Order (Sweetland Engineering) and Defendant's Motion for Protective Order (Wallacton-Boggs Municipal Authority) are scheduled to be heard on Wednesday, March 15, 2006 at 11:00 a.m. in Courtroom No. 1. Counsel for all parties must be present for the argument. There will not be a teleconference for this argument. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Kroll, Mumford, Kronthal, McKeon, Bell, McTiernan, Mannix, Kubay. Faxed to above 3/10/06, Mailed 3/13/06	Fredric Joseph Ammerman
03/13/2006	Praecipe for Expedited Disposition of Defendant's Motion for Protective Order, filed by s/Rolf E. Kroll on behalf of Wallaceton-Boggs No CC	Fredric Joseph Ammerman
03/14/2006	Answer to Wallaceton-Boggs Municipal Authority's Motion for Protective Order, filed by s/ Richard A. Bell Esq. No CC.	Fredric Joseph Ammerman
	Answer to Sweetland's Motion for Protective Order, filed by s/ Richard A. Bell Esq. No CC.	Fredric Joseph Ammerman
03/17/2006	Order, NOW, this 17th day of March, 2006, upon consideration of the Motion of Def., Wallaceton-Boggs Municipal Authority it is Ordered: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. Certified Copies Mailed to: McKeon, R. Bell, Kroll, Mumford, Kronthal, McTiernan, Manix, Kubay copies faxed to: Kroll, McKeon, Bell	Fredric Joseph Ammerman
	Order, NOW, this 17th day of March, 2006, following argument on the Motion for Protective Order filed on behalf of the Additional Defendant, Sweetland Engineering, Ordered: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC: McKeon, Bell, Kroll, Mumford, Kronthal, McTiernan, Mannix, Kubay. Fax to: McKeon, Bell, McTiernan, Mannix, Kubay	Fredric Joseph Ammerman

Case	Parties	Filing date	Judgment	Disposition	Disposition Date
2006-00299-CD	Commonwealth of Pennsylv Plaintiff TMP Acquisitions Co., Inc. Defendant	02/24/2006	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: $39,970.00	Open	02/24/2006
2006-00300-CD	Einsig, Barry Defendant Indiana County Municipal S Plaintiff	02/24/2006	Municipal Lien In favor of: Plaintiff Judgment amount or comment: $1,346.58	Open	02/24/2006
2006-00301-CD	Einsig, Barry Defendant Indiana County Municipal S Plaintiff	02/24/2006	Municipal Lien In favor of: Plaintiff Judgment amount or comment: $1,346.58	Open	02/24/2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant.

COMPLAINT IN CIVIL ACTION

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon, Esquire
Pa. I.D. #76232

FLUKE, WEIERS & SCHMITT, P.C.
Firm I.D. #029

1400 The Bank Tower
Pittsburgh, PA 15222
(412) 261-3800

JURY TRIAL DEMANDED

FILED
AUG 03 2001
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
WALLACETON-BOGGS	)	
MUNICIPAL AUTHORITY,	)	
	)	
Defendant.	)	

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
David S. Meholick, Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
	)	
Defendant.	)	

COMPLAINT IN CIVIL ACTION

AND NOW, comes the Plaintiff, Continental Construction, Inc., by and through its attorneys, Fluke, Weiers & Schmitt, P.C., and Kevin J. McKeon, Esquire, and files the following Complaint against Defendant, Wallaceton-Boggs Municipal Authority (hereinafter "Wallaceton-Boggs"), and in support thereof alleges as follows:

1. Plaintiff, Continental Construction, Inc. ("CCI") is a Pennsylvania corporation with its registered office and place of business located at P.O. Box 126, Johnsonburg Road, Ridgway, PA 15853.

2. Defendant, Wallaceton-Boggs Municipal Authority ("Authority"), is a Municipal Corporation whose principal place of business is located at Boggs Township Offices, West Decatur, Pennsylvania 16878.

3. Sweetland Engineering & Associates, Inc. (the "Engineer") is a Pennsylvania Corporation with its principal place of business at 600 Science Park Road, State College, PA 16803.

4. In or shortly prior to December of 1999, the Authority contracted with the Engineer to design the construction and installation of approximately 48,570 Lineal Feet of 6

Inch diameter and 8 Inch diameter gravity sewer main pipeline, approximately 2,660 Lineal Feet of 6 Inch diameter force main sewer pipeline, 6,400 Lineal Feet of sewer laterals, and related appurtenances, in the Borough of Wallaceton, and Township of Boggs, in Clearfield, Pennsylvania (hereinafter "the Project").

5. In or about December of 1999, the Authority and Engineer caused the specifications and detailed construction drawings to construct the Project, collectively named as "Contract 2000-01: Wallaceton-Boggs Municipal Authority Sanitary Sewer Construction Project" (hereinafter "the Contract Documents"), to be made available to contractors, including CCI, interested in submitting bid proposals to construct the Project. A complete copy of the Project Manual containing all of the Contract Documents and Plans is not attached hereto due to the voluminous nature of these documents, and because a copy is already in the possession of the Defendant, Authority. However, a complete copy of the Contract Agreement, General Conditions, Supplementary Conditions, and the Appendix setting forth the Soil Erosion and Sediment Pollution Control Plan Narrative, is bound, covered, and filed separately under "Exhibit A to the Complaint."

6. On March 23, 2000, CCI and other potential bidders attended a Mandatory Pre-Bid Conference conducted by the Authority and the Engineer, to clarify and discuss the scope of the work called for in the Contract Documents.

7. On or about April 6, 2000, CCI submitted its bid proposal to construct the Project, on a form prescribed by the Authority, in direct reliance on the representations made by the Authority and the Engineer as set forth in the Contract Documents, and the information discussed and provided at the Pre-Bid Conference.

8. On or about April 6, 2000 the proposals of the various bidders were opened by the Authority and it was determined that CCI was the apparent Lowest Responsible Bidder.

9. Subsequent to the bid opening, the Authority resolved to award the contract for construction of the Project to CCI, such that on or about June 21, 2000, the Authority issued a written construction contract (hereinafter "the Contract") in the amount of $1,887,422.95 to CCI, and the Contract was executed by both CCI and the Authority.

10. Also subsequent to the Bid Opening, on June 15, 2000, the Authority and the Engineer conducted a Pre-Construction Meeting with CCI to further discuss the scope and expected progress of the work called for in the Contract Documents, and CCI commenced the work called for in the Contract (the "Work").

11. Over the course of the construction of the Project, a multitude of disputes arising out of the Contract arose between CCI, the Authority, and the Engineer, which caused significant additional costs to CCI, as set forth in greater detail below.

12. In accordance with the Contract Documents, and at all times relevant hereto, the Engineer and its employees, have acted as the authorized agents and representatives of the Authority.

COUNT I: BREACH OF CONTRACT
(Failure to Issue Change Order: Change of Approved Manholes)

13. CCI realleges and incorporates by reference Paragraphs 1 through 12 of its Complaint as if fully set forth herein.

14. In accordance with the Contract Documents and prior to ordering the Manholes to be installed on the Project, on or about June 12, 2000, CCI submitted Shop Drawings to the Engineer for approval of the specific dimensions of the proposed Manholes, and to approve the proposed Manhole supplier, McGill Septic Tank Company.

15. On or about June 14, 2000, the Engineer approved the Shop Drawings and the proposed Manhole Supplier.

16. In reliance on the approvals provided by the Engineer, CCI immediately proceeded to order the approved Manholes, and to contract with the approved supplier.

17. Approximately two (2) weeks later, the Engineer notified CCI that it was withdrawing the approvals, and requested that CCI immediately re-submit Shop Drawings and a proposed supplier in accordance with the Engineer's changed interpretation of the Contract Specifications.

18. In accordance with the Engineer's order, on July 3, 2000, CCI immediately re-submitted Shop Drawings from a different Manhole supplier, namely Fi-Hoff, Inc., and requested that the Authority issue a Change Order to reimburse CCI for the additional costs incurred due to the Engineer's new interpretation of the Specifications.

19. On or about July 12, 2000, the Engineer approved the new Shop Drawings and the new supplier.

20. Due to the delay caused by the Engineer's change in interpretation of the Specifications, and the Engineer's delay in approving the new Shop Drawings and supplier, on July 12, 2000, CCI reiterated its request for a Change Order and requested a twenty-one (21) day extension of the Contract Time.

21. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to adjust the Contract sum or time.

22. The aforementioned change was beyond the scope of the Contract and required CCI to incur substantial additional cost and loss of Contract time.

23. Despite full and complete performance of this change by CCI, CCI is still owed additional compensation and an extension of the contract time.

24. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the Engineer's changed interpretation of the Specifications constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT II: BREACH OF CONTRACT
(Failure to Issue Change Order: Additional Erosion & Sedimentation Controls)

25. CCI realleges and incorporates by reference Paragraphs 1 through 24 of its Complaint as if fully set forth herein.

26. The Contract Documents included specifications requiring the Authority to obtain approval of an Erosion & Sedimentation ("E&S") Control Plan for the Clearfield County Conservation District, at Section 01010, Part 1.07(A)(4).

27. The Contract Documents included an E&S Control Plan under Appendix A.

28. With regard to Filter Fabric Fence, the E&S Control Plan indicated that:

> "Filter Fabric (silt) fence shall be installed where shown on the Contract Drawings or directed by Engineer and/or a Clearfield County Conservation District representative."

29. The Contract Drawings did not show any Filter Fabric Fence, and the Bid Form contained no bid item for Filter Fabric Fence.

30. However, during the course of the work, on or about September 20, 2000, a representative of the Clearfield County Conservation District, acting on behalf of the Pennsylvania Department of Environmental Protection ("DEP"), instructed CCI to install Filter Fabric Fence at a multitude of locations throughout the Project area.

31. On September 21, 2000, CCI related this instruction to the Engineer and requested a Change Order to compensate CCI for the installation of Filter Fabric Fence at the rate of $4.50 per Lineal Foot.

32. On October 2, 2000, CCI amended its request to include an extension of the Contract Time due to the additional work required by the installation of the Filter Fabric Fence.

33. With regard to the application of Mulch to disturbed areas, the E&S Control Plan in the Contract Documents indicated:

(a) "An estimated 3.25 acres shall be disturbed during the construction project.";

(b) "Any disturbed area on which activity has ceased and which will remain exposed for more than 20 days must be stabilized immediately. During non-germinating periods, mulch must be applied at the recommended rates.";

(c) "Apply Hay or Straw mulch at a rate of 3 tons per acre."; and

(d) "Permanent control measures (fertilizer, seed, lime and mulch) shall be placed over final graded areas within 10 days after completion of final grading."

34. As a further result of the instructions received from the Clearfield County Conservation District, the Engineer required CCI to apply mulch daily, and over approximately 25.92 acres, rather than over the estimated 3.25 acres and on a less frequent basis.

35. As a further consequence of the Clearfield County Conservation District and DEP's investigation of the Project and the E&S Control Plan, and in consideration for waiving

any penalties for previous violations, the DEP required the Authority to revise and re-design the E&S Control Plan, and to re-apply for the proper permits to continue construction of the Project.

36. On October 23, 2000, CCI requested a Change Order to compensate CCI for the additional costs for installation of an additional sixty-eight (68) tons of mulch at the price of $350.00 per ton, and an extension of contract time in the amount of twenty (20) days, resulting from the change in the required installation of mulch.

37. On or about November 8, 2000, the Engineer submitted the required revisions to the E&S Control plan that documented the changes to the Contract requiring significant installation of additional silt fence, clay dikes, stream crossings, and rock filter dams to the Project.

38. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to properly adjust the Contract sum or time as a result of the changes in the E&S Control Plan.

39. On or about January 15, 2001, the Engineer issued Change Order No. 7 to reimburse CCI at the rate of $2.50 per lineal foot for silt fence and $300.00 for each rock filter dam, and a one (1) day time extension per every 800 lineal feet of silt fence installed.

40. In correspondence dated February 22, 2001, attached to Change Order No. 7, CCI revised the Change Order and reserved the right to submit a claim for the originally submitted additional costs and time, and eventually, Change Order No. 7 as revised, was executed with CCI's written objections attached, on March 29, 2001.

41. The aforementioned change was beyond the scope of the Contract and required CCI to incur substantial additional cost and loss of Contract time.

42. Despite full and complete performance of this change by CCI, CCI is still owed additional compensation and an extension of the Contract time.

43. The Authority's failure and refusal to issue a Change Order properly adjusting the Contract sum and time, necessitated by the required changes to the E&S Control Plan, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT III: BREACH OF CONTRACT
(Failure to Issue Change Order: Authority's Failure to obtain proper Permit)

44. CCI realleges and incorporates by reference Paragraphs 1 through 43 of its Complaint as if fully set forth herein.

45. The Contract Documents included specifications requiring the Authority to obtain both the DEP's Water Quality Management (Part II) Permit for construction of the sanitary sewers, and the DEP's Bureau of Dams and Waterway Management General Permits for stream crossings, stream encroachment, or jurisdictional wetland encroachment, at Section 01010, Part 1.07(A)(1) and (2), respectively.

46. On or about September 25, 2000, a representative of the DEP inspected the Project and determined that the Authority had not obtained the proper permit to allow construction in the Simeling Run Watershed, Laurel Run Watershed, their tributaries and

wetlands ("Simeling and Laurel Run Watershed Areas") throughout the area of the Project, nor to allow for any stream crossings by construction equipment or for installation of sewer pipeline.

47. On or about October 2, 2000 the DEP representative again inspected the Project and indicated that CCI would be subject to fines and/or penalties if CCI did not cease all work within the Simeling Run and Laurel Run Watershed Areas during the three (3) month period of October 1, 2000 through January 1, 2001, and if CCI did not refrain from crossing any streams with construction equipment or sewer pipeline, or from working anywhere within 50 feet of the Simeling Run and Laurel Run Watershed Areas.

48. As a further consequence of the DEP's investigation, and in consideration for waiving any penalties for previous violations, the DEP revoked the GP-5 Permit and required the Authority to revise and re-design the E&S Control Plan prior to re-applying to obtain the proper permits to continue construction of the Project.

49. As a result of the threats of fines and/or penalties made by the DEP representative, and as a result of the DEP's requirement that the Authority re-design the E&S Control Plan and re-apply for the proper permits, on October 2, 2000, CCI requested a Change Order to extend the Contract Time by ninety-two (92) days, due to the fact that CCI was prohibited from working in certain critical areas of the Project, causing significant and drastic change to the as-bid and as-planned sequence and flow of work, and delaying ultimate completion of the Project.

50. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract time by a Written Amendment, a Change Order, or a Work Change Directive, the

Authority has failed and refused to adjust the Contract time as a result of CCI's efforts to comply with the requirements of the DEP and to avoid fines and/or penalties.

51. The aforementioned orders from the DEP changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

52. Despite CCI's compliance with the DEP's requirements, CCI is still owed additional compensation and an extension of the contract time.

53. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the requirements of the DEP, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT IV: BREACH OF CONTRACT
(Failure to Issue Change Order: Unforeseen and Differing Site Conditions)

54. CCI realleges and incorporates by reference Paragraphs 1 through 53 of its Complaint as if fully set forth herein.

55. The Contract Documents included a set of construction drawings and plans (hereinafter collectively referred to as "the Plans") which pictured both the installation of the work called for in the Specifications, as well as the existing conditions throughout the area where the Project was to be performed (hereinafter referred to as "the Site").

56. The Plans depicted the Physical Condition of the Site, the Subsurface Conditions, and the locations of existing Underground Facilities, including the locations of various existing underground facilities.

57. Prior to submitting its bid, representatives of CCI made their own reasonable investigation of the Site, and carefully examined the Plans, and in reliance on these investigations, submitted CCI's bid proposal.

58. During the course of its work, CCI discovered that the Plans were inaccurate and grossly misrepresented the character of the work, as the actual Physical Conditions, Subsurface Conditions and locations of Underground Facilities were in large part, incorrect, unmarked, unspecified, omitted, and/or inaccurate.

59. More specifically, the Physical Conditions were inaccurate as follows:

a. The Plans failed to depict the existence of various man-made items, equipment, and obstructions to the installation of the work;

b. The Plans failed to depict the existence of wetlands between Manholes AE-3 and AE-4, AE-13 and AE-14, AE-14 and AE-15, and AE-17 and AE-18; and

c. The Plans failed to depict the existence, proximity and condition of salvage items blocking the path of construction from Manholes S-9 to T-1, S-9 to S-10, T-1 to U-1, and T-1 to T-2.

60. More specifically, the Subsurface Conditions were inaccurate as follows:

a. The Plans failed to depict the existence of a ten (10) inch thick slab of concrete immediately beneath the roadway of State Route 2024;

b. The Plans failed to depict the existence of a slab of concrete immediately beneath the roadway of Laurel Run and Arc Road;

c. The Plans failed to depict the existence of brick, concrete, ash pits, and sand pits, between Manholes A-4 and A-5, AE-2 through A-3, and A-3 through A-5;

d. The Plans failed to depict the existence of an unmarked Building Foundation between Manholed AE-1 and AF-1;

e. The Plans failed to depict the existence of an unsuitable trench bottom at Manholes A-32; and

f. The Plans failed to depict the existence, proximity and condition of existing waterline constructed of asbestos material known as transite;

61. More specifically, the Locations of Underground Facilities were inaccurate as follows:

a. The Plans failed to depict the existence of, or accurate subsurface location of existing water lines;

b. The Plans failed to depict the existence of, or accurate subsurface location of existing sewer lines;

c. The Plans failed to depict the existence of, or accurate subsurface location of existing gas lines; and

d. The Plans failed to depict the existence of, or accurate subsurface location of existing telecommunication lines.

62. Because these Conditions and Locations were not accurately depicted, or entirely omitted from the Contract Documents, the character of the Project was significantly changed, as CCI was significantly delayed in the progress of its work, was forced to employ extraordinary measures to circumvent such Conditions, and was forced to incur substantial additional costs not anticipated or reasonably foreseen at the time of bid, to complete the Project.

63. Each time CCI encountered changes and additional work resulting from these Differing Conditions, CCI provided written notice to the Authority and/or the Engineer, and requested that the Contract Price and Time be equitably adjusted.

64. With regard to Changes in the Work, and Differing Conditions, the Contract Documents provided that:

a. The Authority may adjust the Contract price and time by a Written Amendment, a Change Order, or a Work Change Directive, according to Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims"); and

b. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of differing subsurface or physical conditions cause an increase in the Contractor's cost and/or time for performance of the Work, according to Article 4 of the General Conditions of the Contract Documents (entitled "Availability of Lands; Subsurface and Physical Conditions; Reference Points").

65. Despite the existence of the Contract provisions cited in the previous paragraph, the Authority has failed and refused to adjust the Contract price or time as a result of the changes in the Work, or the additional cost and time necessary to circumvent the differing conditions.

66. With regard to Underground Facilities, the Pennsylvania Underground Utility Line Protection Act, 73 P.S. §176, et seq., provides that:

a. Facility Owners shall be members of a One Call System (73 P.S. §177(1));

b. Facility Owners shall, within 2 working days of a One Call request, mark, stake, locate or otherwise provide the position of their underground facilities within 18 inches from the outside wall of the facility, so that a contractor may locate the precise position of the facility (73 P.S. §177(5));

c. Engineers shall request line and facility information prior to the time a final design is completed (73 P.S. §179(2));

d. Engineers shall show the position and type of underground facilities upon their design drawings (73 P.S. §179(3));

e. Engineers shall make reasonable effort to prepare design drawings to avoid damage and minimize interference with underground facilities (73 P.S. §179(4)); and

f. If Contractors comply with the Underground Utility Line Protection Act and are not negligent, they shall incur no obligation to facility owners, operators, owners or other persons (73 P.S. §180(12)).

67. Despite the terms of the Underground Utility Line Protection Act, certain Facility Owners in the Project Area were not members of a One Call System, and/or did not mark, stake, locate or otherwise provide the position of their underground facilities.

68. Despite the terms of the Underground Utility Line Protection Act, the Engineer did not show the position and type of underground facilities in the Contract Documents, failed to exercise reasonable care to otherwise determine the position and type of underground facilities in the Project area, and failed to make a reasonable effort to prepare the design drawings to avoid damage and minimize interference with underground facilities.

69. Despite the terms of the Underground Utility Line Protection Act, CCI incurred a multitude of obligations to Facility Owners and the Authority, and was directed and required to repair and relocate underground facilities without reimbursement.

70. Upon encountering an unmarked or mismarked underground facility, CCI notified the Engineer and the Authority and requested adjustment to the Contract sum and time.

71. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the changes in the Work and the differing conditions, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT V: BREACH OF CONTRACT
(Failure to Issue Change Order: Constructive Fraud)

72. CCI realleges and incorporates by reference Paragraphs 1 through 71 of its Complaint as if fully set forth herein.

73. The Contract Documents included a set of construction drawings and plans (hereinafter collectively referred to as "the Plans") which pictured both the installation of the work called for in the Specifications, as well as the existing conditions throughout the area where the Project was to be performed (hereinafter referred to as "the Site").

74. The Plans and Specifications constituted a positive and material representation by the Authority as to the conditions relative to the Work to be performed pursuant to the Contract.

75. Prior to submitting its bid, representatives of CCI made their own reasonable investigation of the Site, and carefully examined the Plans, but due to time and cost restraints, CCI had no reasonable means to conduct the kind of thorough and independent investigation of the conditions performed by the Authority and Engineer, and reasonably relied on the representations of the Authority and Engineer.

76. However, during the course of the Work, CCI discovered that the Plans were false, misleading, inaccurate and grossly misrepresented the character of the work, as the actual Physical Conditions, Subsurface Conditions and locations of Underground Facilities were in large part, incorrect, unmarked, unspecified, omitted, and/or inaccurate.

77. As a direct result of the false, misleading, and inaccurate Plans and Specifications, the character of the Project was significantly changed, and CCI was significantly delayed in the progress of its work, was forced to employ extraordinary measures to circumvent such Conditions, and was forced to incur substantial additional costs not anticipated or reasonably foreseen at the time of bid, to complete the Project.

78. Each time CCI encountered changes and additional work resulting from these Differing Conditions, CCI provided written notice to the Authority and/or the Engineer, and requested that the Contract Price and Time be equitably adjusted.

79. With regard to Changes in the Work, and Differing Conditions, the Contract Documents provided that:

a. The Authority may adjust the Contract price and time by a Written Amendment, a Change Order, or a Work Change Directive, according to Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims"); and

b. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of differing subsurface or physical conditions cause an increase in the Contractor's cost and/or time for performance of the Work, according to Article 4 of the General Conditions of the Contract Documents (entitled "Availability of Lands; Subsurface and Physical Conditions; Reference Points").

80. Despite the existence of the Contract provisions cited in the previous paragraph, the Authority has failed and refused to adjust the Contract price or time as a result of the changes in the Work, or the additional cost and time necessary to circumvent the differing conditions.

81. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the false, misleading, and inaccurate Plans and Specifications, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT VI: BREACH OF CONTRACT

(Failure to Issue Change Order: PennDOT Storm Sewer Relocation and Installation)

82. CCI realleges and incorporates by reference Paragraphs 1 through 81 of its Complaint as if fully set forth herein.

83. On or about January 16, 2001, it was discovered that the Plans failed to accurately depict the location of an existing storm sewer on Clearfield Street, beyond Manhole A-51.

84. Due to this error in the Plans, the Pennsylvania Department of Transportation ("PennDOT") indicated to CCI that the Authority was required to relocate and replace approximately Four Hundred and Fifty (450) Lineal Feet of storm sewer and catch basins, and CCI notified the Authority and Engineer that this additional work would require a Change Order compensating CCI for the cost of the materials and extending the Contract Time.

85. More specifically, on January 16, 2001, CCI requested a Change Order reflecting an increase in the Contract Sum in the amount of $25.00 per Lineal Foot of pipe, $300.00 per catch basin for labor to install, and a five (5) day extension to the Contract Time.

86. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the changes initiated by PennDOT.

87. The aforementioned changes initiated by PennDOT changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

88. Despite CCI's compliance with the changes initiated by PennDOT and approved by the Authority, CCI is still owed additional compensation and an extension of the contract time.

89. Although the Authority ultimately issued Change Order No. 9, the Change Order failed to properly compensate CCI or to properly extend the Contract time.

90. The Authority's failure and refusal to issue a proper Change Order adjusting the Contract sum and time, necessitated by the changes initiated by PennDOT and approved by the Authority, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT VII: BREACH OF CONTRACT
(Failure to Issue Change Order: Relocation of Manholes A21 through A28)

91. CCI realleges and incorporates by reference Paragraphs 1 through 89 of its Complaint as if fully set forth herein.

92. On or about October 30, 2000, the Authority directed CCI to relocate a segment of sewerline running between Manholes A21 through A28, and issued "Work Directive No. 1," reflecting this change.

93. In response to Work Directive No. 1, CCI notified the Authority and Engineer that this change would require additional work and would require a Change Order compensating CCI for the additional work and extending the Contract Time.

94. More specifically, CCI requested a Change Order reflecting an increase in the Contract Sum and extension to the Contract Time to provide additional temporary mulch stabilization, additional clearing and grubbing, additional surveying, and other work associated with the change.

95. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive,

the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the relocation of the sewerline running between Manholes A21 and A28.

96. The aforementioned relocation changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

97. Despite CCI's compliance with the relocation request, CCI is still owed a Change Order reflecting the additional compensation and extension of the Contract Time.

98. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the relocation of the sewerline running between Manholes A21 and A28, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT VIII: BREACH OF CONTRACT
(Failure to Issue Change Order: Removal of Stockpiled Fill)

99. CCI realleges and incorporates by reference Paragraphs 1 through 98 of its Complaint as if fully set forth herein.

100. The Contract Documents included specifications requiring CCI to stockpile and maintain Five Hundred (500) Cubic Yards of excavated material for use as backfill material, according to Section 02225(2.03)(A)(1).

101. Upon information and belief it is averred that the Authority and/or the Engineer authorized another contractor to remove significant quantities of material from CCI's stockpile,

such that by December, 2000, CCI was required to supply additional material for installation as backfill to the stockpile.

102. On or about December 21, 2000, CCI requested additional compensation for the unauthorized removal of CCI's stockpiled material.

103. Despite the fact that Section 02225(2.03)(A)(2) of the Contract Documents provides that the Authority will provide a Change Order to compensate the Contractor for additional amounts of stockpiled material, the Authority has failed and refused to issue a Change Order to compensate CCI for the additional stockpiled material.

104. The aforementioned supply of additional stockpiled material changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

105. Despite CCI's compliance with Section 02225 of the Contract Documents, CCI is still owed additional compensation and an extension of the Contract Time.

106. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by Section 02225(2.03)(A)(2) of the Contract Documents, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT IX: BREACH OF CONTRACT
(Failure to Issue Change Order: Roadway Repairs)

107. CCI realleges and incorporates by reference Paragraphs 1 through 106 of its Complaint as if fully set forth herein.

108. On or about February 13, 2001, the Authority by and through the Engineer, directed CCI to perform remedial work to certain roadway areas throughout the Site that were failing due to the Engineer's defective design and failure to account for the conditions caused by the freeze and thaw cycle at this time of year, and failure to account for pre-existing conditions.

109. In response to the request to perform remedial work to the roadways, CCI notified the Authority and Engineer that this change would require additional work and would require a Change Order compensating CCI for the additional work and extending the Contract Time.

110. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the required remedial work to the roadways.

111. The aforementioned remedial work changed both the sequence and the scope of the work called for by the Contract and would require CCI to incur substantial additional costs and additional Contract time.

112. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the required remedial work, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT X: BREACH OF CONTRACT

(Failure to Issue Change Order: Elimination of Dumpsite)

113. CCI realleges and incorporates by reference Paragraphs 1 through 112 of its Complaint as if fully set forth herein.

114. During the Mandatory Pre-Bid Conference, the Engineer and Authority notified prospective bidders, including CCI, that 2 dumpsites would be made available to the Contractor, within the Site, to dispose of excess material removed during the course of construction.

115. Based on this notification, CCI did not account for additional costs associated with trucking excess material out of the Site area and disposing of such material.

116. However, after the Contract was awarded to CCI and executed, the Authority arbitrarily eliminated one of the dumpsites designated during the Mandatory Pre-Bid Conference available to CCI.

117. Because this dumpsite was eliminated, CCI incurred substantial additional costs and incurred substantial additional time in trucking excess material out of the Project area and back to the remaining dumpsite.

118. CCI notified the Engineer and Authority of the need for a Change Order to adjust the Contract sum and time, but the Authority refused to provide the same.

119. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of its decision to eliminate a dumpsite.

120. The decision to eliminate a dumpsite changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional costs and additional Contract time.

121. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the additional trucking, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XI: BREACH OF CONTRACT
(Failure to Issue Change Order: Material and Significant Quantity Differences)

122. CCI realleges and incorporates by reference Paragraphs 1 through 121 of its Complaint as if fully set forth herein.

123. Throughout the course of the work, CCI discovered that the estimated quantities on Bid Items supplied in the Contract Documents were significantly inaccurate.

124. In fact, it became apparent that the quantities estimated for Bid Item Nos. 2.E (8" Sewer 12-14' deep), 2.F (8" Sewer 14-16' deep), 4.B (6" Force Main), 5.D (Manhole Drop Connections), 7.A (4" Sewer Laterals), 7.B (6" Sewer Laterals), 11.A (5" BCBC Pavement Replacement), 13 (Concrete Sidewalk/Driveway Replacement), 18 (Stream Crossings), and 20 (Concrete Encasement), were underestimated by as much as 260%, but in each case by more than 15%.

125. During the Pre-Construction Conference, the Authority and Engineer agreed that actual quantity differences of 15% or more would be material and significant, such that new unit prices would be appropriate.

126. Upon discovering these significant quantity differences, CCI notified the Authority and Engineer that these changes would require adjustment to the as-bid unit prices, and reasonable extension of the Contract Time.

127. More specifically, on May 9, 2001, CCI requested a Change Order primarily based on Article 11 of the General Conditions of the Contract Documents which provides for adjustment to the Contract price if "the quantity of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement."

128. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, and despite the fact that Article 11 of the General Conditions specifically addresses errors in the estimated quantities, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the material and significant changes in estimated quantities.

129. The aforementioned material and significant changes in the estimated quantities changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional costs and additional Contract time.

130. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the material and significant changes in estimated quantities, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XII: BREACH OF CONTRACT
(Failure to Issue Change Order: Delay Damages and Loss of Production Costs)

131. The averments set forth in Paragraphs 1 through 130 are incorporated herein by reference as if set forth in full.

132. In submitting its Bid Proposal, and in reliance on the representations made in the Contract Documents and at the Mandatory Pre-Bid Conference, CCI reasonably expected to perform the Work in a logical, productive and sequential manner in accordance with its As-Planned schedule.

133. Furthermore, the Contract Documents impliedly warranted that the Work could be performed in accordance with the Contract Documents, without delay, interference or disruption from the Authority or the Engineer, and in reasonable cooperation with the Authority and Engineer, such that the Work could be substantially completed within 180 days, and finally completed within 240 days of Notice to Proceed, as set forth at Article 3 of the Contract Agreement.

134. Throughout the course of the Work, CCI's performance was continuously delayed, disrupted and interfered with by the Authority and its agent, the Engineer, generally and in the following particulars:

a. Failure to accurately depict or describe the locations of underground utilities throughout the Site;

b. Failure to accurately depict or describe subsurface conditions throughout the Site;

c. Failure to accurately depict or describe physical conditions throughout the Site;

d. Failure to remove man-made and artificial obstructions throughout the Site;

e. Failure to obtain construction right-of-ways, highway occupancy permits, and easements per General Conditions Section 4.01.A in a timely-fashion;

f. Failure to provide reasonably prompt responses to the differing conditions throughout the Site;

g. Failure to provide reasonably prompt responses to CCI's requests for Change Orders for extra work and extensions of Contract Time;

h. Failure to obtain the proper permits to allow CCI to proceed with the Work, prior to issuing Notice to Proceed;

i. Failure to obtain the proper permits in a reasonably prompt manner to allow CCI to proceed with its work after notification that the acquired permits were inadequate;

j. Failure to provide reasonably prompt review of submittals required when the Engineer changed its interpretation of approved manholes as set forth in Count I, above;

k. Failure to provide reasonably prompt information relating to the relocation of segments of sewerline, including but not limited to the relocation of Manholes AG-1 through AE-3;

l. Failure to provide reasonably prompt approval of proposed Subcontractors;

m. Failure to extend the Contract Time as a result of the additional work required by PennDOT, respectively, above;

n. Failure to extend the Contract Time as a result of the additional work required to install the sewerline through and under the various differing subsurface conditions described in Count IV, above;

o. Failure to extend the Contract Time as a result of the additional work required by the E&S Control Changes described in Count II, above;

p. Failure to extend the Contract Time as a result of the additional work associated with finding, repairing, and relocating the unmarked and/or mismarked underground utilities throughout the Site;

q. Failure to extend the Contract Time as a result of CCI's encounter with Transite pipe containing hazardous asbestos material;

r. Failure to extend the Contract Time as a result of the Authority's delay in selecting and approving grinder pumps;

s. Failure to extend the Contract Time as a result of adding additional wye connections, not shown on the Plans;

t. Failure to delineate and provide an on-Site dumpsite;

u. Failure to extend the Contract Time to provide for a "winter shutdown" period;

v. Prohibiting CCI from communicating with the Engineer orally, and requiring all communication to be in writing; and

w. Failure to otherwise cooperate with CCI to ensure the timely and reasonably orderly performance of the Work.

135. As a consequence of the unexpected addition of work, conditions differing significantly from the Contract Documents, and the other various failures as averred in the previous paragraph, the Authority forced CCI to resequence and reschedule its performance and to perform construction activities throughout the winter months, while interfering with and preventing CCI's ability to construct the Work as-planned in a sequential, orderly and continuous manner.

136. Throughout the course of the Work, CCI continuously and repeatedly notified the Authority and its Engineer of the delays and disruptions averred above.

137. Despite proper and repeated notice, and despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may equitably adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to adjust the Contract Sum and Time for delays attributable to the Authority.

138. The aforementioned delays and disruptions changed not only the sequence and the scope of the work called for by the Contract, but significantly extended the actual performance of the Work, and directly and proximately caused CCI to lose productivity, to incur additional job site and home office overhead, to incur extended equipment rental, fuel, and maintenance costs, to reduce CCI's bonding capacity, and to prevent CCI from obtaining additional work.

139. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by its delays and disruptions to the Work, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XIII: BREACH OF CONTRACT
(Misrepresentation)

140. CCI realleges and incorporates by reference Paragraphs 1 through 139 of its Complaint as if fully set forth herein.

141. In preparing the Contract Documents and soliciting bids based upon the same, the Authority had a duty to disclose all relevant information within its possession to bidders, including CCI, which would impact the performance of the Work.

142. Prior to the execution of the Contract, the Authority, through its acts, omissions, conduct, words and assertions as chiefly set forth in the Contract Documents and in the Mandatory Pre-Bid Conference, negligently, recklessly, and/or knowingly and intentionally concealed material facts concerning the Work from the bidders, including CCI.

143. Specifically, the Authority withheld its superior knowledge and failed to disclose:

a. The incomplete status of the easements and right-of-ways necessary for performance of the Work;

b. The location and presence of the concrete under State Route 2024;

c. The location and presence of the concrete under Laurel Run and Arc Road;

d. The location and presence of the brick, concrete, ash and sand pits associated with an abandoned subsurface brickyard;

e. The location and presence of subsurface and abandoned concrete foundations;

f. The location and presence of protected wetlands in the Site;

g. The inadequate status of the permits required for performance of the Work;

h. The existence of a protected wild trout stream and watershed area, namely Simeling Run and Laurel Run Watershed Areas, through the Site;

i. The inadequate status of the E&S Control Plan included in the Contract Documents;

j. The lack of 2 dumpsites;

k. The various aspects of the Work which were required to be changed due to PennDOT requirements, including relocation of storm and sanitary sewerline, and additional work associated with PennDOT paving requirements;

l. The inaccurate and/or omitted depiction of underground utilities throughout the Site; and

m. The necessity for PennDOT approved manholes as averred above, in Count I.

144. CCI had no knowledge that the Authority would fail to disclose the material facts averred in the preceding paragraph, and instead, reasonably relied upon the representations made by the Authority in preparing its Bid Proposal and executing the Contract at its Bid price.

145. The Authority knew or should have known that the misrepresentation of the various material facts averred above would be relied upon by bidders, including CCI, in formulating Bid Proposals, and that such misrepresentation would result in grossly inaccurate Bid Proposals.

146. CCI reasonably relied to its detriment upon the misrepresentation of the material facts associated with the Work as contained in the Contract Documents and the Mandatory Pre-Bid Conference.

147. As a direct and proximate consequence of the misrepresentations and omissions made by the Authority, and the Authority's failure to disclose its superior knowledge, CCI suffered significant damages in the form of additional costs, additional and lost labor productivity, and extended jobsite and home office overhead.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XIV: BREACH OF CONTRACT
(Contract Recission: Cardinal Change)

148. The averments set forth in Paragraphs 1 through 147 are incorporated herein by reference as if set forth in full.

149. Due to the defective nature of the Contract Documents, and the materially different conditions encountered by CCI during the course of the Work, the actual character of CCI's scope of work and method and manner of performance (the "As-Built Scope of Work") was drastically altered from that contemplated by the as-bid Contract Documents.

150. Throughout the course of the Work, CCI continuously and repeatedly notified the Authority of the multitude of changes and the nature of the As-Built Scope of Work; nonetheless, the Authority compelled CCI to continue performance despite its knowledge of the drastically changed As-Built Scope of Work.

151. As a result of the Authority's decision to compel performance of the As-Built Scope of Work, without adequate compensation or reasonable time extension, the Authority materially breached the Contract entitling CCI to contract rescission, and payment on the basis of restitutional recovery of CCI's actual costs in labor and materials, with reasonable overhead and profit.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XV: QUANTUM MERUIT

152. CCI realleges and incorporates by reference Paragraphs 1 through 151 of its Complaint as if fully set forth herein.

153. At the request of the Authority, and on the Authority's express promise to pay the reasonable value thereof (based on Article 10 of the General Conditions to the Contract), CCI rendered certain construction services, performed labor and furnished materials and equipment required for the installation of approximately 48,570 Lineal Feet of 6 Inch diameter and 8 Inch

diameter gravity sewer main pipeline, approximately 2,660 Lineal Feet of 6 Inch diameter force main sewer pipeline, 6,400 Lineal Feet of sewer laterals, and related appurtenances, in the Borough of Wallaceton, and Township of Boggs, in Clearfield, Pennsylvania.

154. As a result of CCI's performance of the services discussed in the preceding paragraph and the acceptance thereof by the Authority, the Authority received the benefit of services and materials having a fair and reasonable value far in excess of CCI's Bid Proposal.

155. Despite repeated demands, the Authority has failed and refused to compensate CCI for the full, fair and reasonable value of the benefit it received, and has been unjustly enriched at the expense of CCI.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XVI: BREACH OF CONTRACT
(Failure to Issue Change Order: Contract Time Extension)

156. The averments set forth in Paragraphs 1 through 155 are incorporated herein by reference as if set forth in full.

157. Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, for additional or changed work or delays beyond the Contractor's control.

158. As set forth in the preceding Counts hereof, CCI encountered a multitude of delays, changes, and extra work beyond CCI's control, and continuously and repeatedly requested that the Authority extend the Contract Time.

159. However, the Authority has unreasonably refused to extend the Contract Time.

160. The Authority's failure to provide a reasonable time extension constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XVII: BREACH OF CONTRACT
(Improper Assessment of Liquidated Damages)

161. The averments set forth in Paragraphs 1 through 160 above are incorporated herein by reference as if set forth in full.

162. The Contract Documents required CCI to obtain Substantial Completion of the Work within 180 days of the Notice to Proceed, and Final Completion of the Work within 240 days of Notice to Proceed, subject to equitable adjustment in the Contract Time pursuant to Article 10 of the General Conditions of the Contract Documents.

163. Despite a multitude of repeated and continuous requests to extend the Contract Time in a reasonable fashion, and to provide a winter shutdown as promised during the Mandatory Pre-Bid Conference, the Authority failed and refused to do so, in material Breach of the Contract.

164. Regardless, CCI made extraordinary efforts to perform the Work and complete the Project expeditiously.

165. Throughout the course of its performance, CCI has applied for payments on a monthly basis, in accordance with Article 5 of the Contract, and Article 14 of the General Conditions of the Contract Documents.

166. Article 3 of the Contract provides that the Authority may assess Liquidated Damages in the amount of $800.00 per day for each day that CCI failed to achieve Substantial Completion beyond the Substantial Completion deadline, and provides that the Authority may collect Liquidated Damages in the amount of $700.00 per day for each day that CCI failed to achieve final completion beyond the Final Completion deadline.

167. Based on information received, it is believed, and therefore averred that the Authority has proceeded to assess liquidated damages of $800.00 per day, beginning December 19, 2000, and asserted its right to assess an additional $700.00 per day, beginning on February 14, 2001, despite the Authority's failure and refusal to provide a reasonable extension of the Contract Time.

168. The Authority's failure and refusal to reasonably extend the Contract Time constitutes a material Breach of Contract which voids any claim for Liquidated Damages.

169. Additionally, the Authority has breached the Contract by electing to assess a total of $1500.00 per day, beginning on February 14, 2001, despite the clear language of the Contract which, even if enforceable, permits Liquidated Damages of only $800.00 per day during the period occurring after the Substantial Completion deadline, and of only $700.00 per day, for each day after an 60 day period permitted to achieve Final Completion.

170. Furthermore, Article 3 of the Contract is void as a matter of law, as the Liquidated Damages provided for therein clearly constitute a penalty bearing no relation to any actual damages suffered by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XVIII: BREACH OF CONTRACT
(Failure to Release Retention)

171. The averments set forth in Paragraphs 1 through 170 above are incorporated herein by reference as if set forth in full.

172. On or about April 23, 2001, the Engineer certified that the Work was Substantially Complete as of "4/18/00," which upon information and belief was to signify that the Work was Substantially Complete as of April 18, 2001.

173. Subsequently, CCI executed a Certificate of Substantial Completion noting that it did not waive its right to contest the date established for Substantial Completion by the Engineer.

174. On or about April 23, 2001, in conjunction with issuing the Certificate of Substantial Completion and pursuant to Article 5.2 of the Contract, the Engineer certified each and every uncompleted item of work with a reasonable cost of completion.

175. Prior to Substantial Completion, with the Engineer's recommendation, the Authority was authorized to withhold 10% of the value of Work completed, until 50% of the Work was completed, at which time the Authority could withhold no more than 5% of the value of the Work completed, pursuant to Article 5.2.1 of the Contract.

176. After Substantial Completion, the Authority was not authorized to withhold any more than 1.5 times the amount of each and every uncompleted item of work, as certified by the Engineer, pursuant to Article 5.2 of the Contract.

177. Since the Engineer certified each and every uncompleted item of work on April 23, 2001, CCI has performed and completed each and every item set forth in the Engineer's certification of April 23, 2001.

178. Despite repeated requests, the Authority has refused to release any further retention and has indicated that it will arbitrarily continue to withhold 10% of the value of the Work, despite clear language in the Contract to the contrary.

179. The Authority's failure and refusal to make payment in accordance with the terms of the Contract, and arbitrary withholding of 10% retention constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XIX: BREACH OF CONTRACT
(Failure to Conduct Final Inspection)

180. The averments set forth in Paragraphs 1 through 179 above are incorporated herein by reference as if set forth in full.

181. Upon completing the Work in full, CCI provided repeated written requests to the Engineer to conduct a Final Inspection of the Work, in accordance with Article 14.06 of the General Conditions to the Contract Documents (entitled, "Final Inspection").

182. Despite CCI's repeated requests, the Engineer and Authority have refused to conduct a Final Inspection, but instead have continued to delay and extend the close-out of the Project.

183. The Authority's failure and refusal to conduct a Final Inspection constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XX: BREACH OF CONTRACT
(Failure to Properly Process Payment Applications)

184. The averments set forth in Paragraphs 1 through 183 above are incorporated herein by reference as if set forth in full.

185. Throughout the course of its performance, CCI has applied for payments on a monthly basis, in accordance with Article 5 of the Contract, and Article 14 of the General Conditions of the Contract Documents.

186. Despite CCI's timely application for payment, the Authority has failed and refused to make payment in full, has arbitrarily reduced and modified CCI's pay applications, and continues to withhold both the balance of payment for work completed and excessive retention.

187. The Authority's failure and refusal to make payment in full, arbitrary reduction and modification of pay applications, and withholding of both the balance of payment for work completed and excessive retention constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE
(Statutory Interest)

188. The averments set forth in Paragraphs 1 through 187 above are incorporated herein by reference as if set forth in full.

189. The Authority is a "Governmental Agency" as that term is defined in Part II of the Commonwealth Procurement Code, 62 Pa. C.S.A. §3102.

190. As a Governmental Agency, the Authority is bound by the provisions of Part II, Chapter 39, "Contracts for Public Works." 62 Pa. C.S.A. §§3901-3942.

191. The Commonwealth Procurement Code provides, in relevant part, the following:

a. A Governmental Agency shall pay a contractor strictly in accordance with the contract (Section 3932(a));

b. If any progress payment is not made when due, the Governmental Agency must pay interest on the amount due, computed at the rate determined by the Secretary of Revenue for interest payments on overdue taxes or the refund of taxes (Section 3932(c)); and

c. If final payment is not made when due, the Governmental Agency must pay interest on the amount due, at the rate of 10% per annum, or is the agency has issued bonds to finance the project, then at the rate of the bond issue, whichever is less, but in no event less than the legal rate of interest (Section 3941(b)).

192. As alleged above, the Authority has failed and refused to pay CCI in strict accordance with the Contract, has failed to make payment of progress payments when due, and has failed to make final payment when due.

193. Because the Authority has failed to pay in accordance with the terms of the Commonwealth Procurement Code, CCI is entitled to statutory interest.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE
(Penalty, Attorney Fees and Expenses)

194. The averments set forth in Paragraphs 1 through 193 above are incorporated herein by reference as if set forth in full.

195. The Authority is a "Governmental Agency" as that term is defined in Part II of the Commonwealth Procurement Code, 62 Pa. C.S.A. §3102.

196. As a Governmental Agency, the Authority is bound by the provisions of Part II, Chapter 39, "Contracts for Public Works." 62 Pa. C.S.A. §§3901-3942.

197. The Commonwealth Procurement Code provides, in relevant part, the following:

a. If a Governmental Agency fails to properly pay a contractor, the contractor is entitled to a penalty equal to 1% per month of the amount that was withheld in bad faith (Section 3935(a)); and

b. If it is determined that the Governmental Agency acted in bad faith, the contractor may be awarded a reasonable attorney fee together with expenses (Section 3935(b)).

198. At all times throughout the performance of the Work, the Authority has exhibited bad faith towards CCI generally, and in the following particulars:

a. In arbitrarily withholding payment from CCI;

b. In vexatiously withholding payment from CCI;

c. In disregarding the recommendations of the Engineer to make payment;

d. In intentionally withholding and failing to disclose information including the incomplete status of the easements and right-of-ways necessary for performance of the Work, the location and presence of the concrete under State Route 2024, the location and presence of the concrete under Laurel Run and Arc Road, the location and presence of the brick, concrete, ash and sand pits associated with an abandoned subsurface brickyard, the location and presence of subsurface and abandoned concrete foundations; and the location and presence of protected wetlands in the Site;

e. In interpreting the requirements of the specifications in an unreasonable and oppressive manner;

f. In failing to obtain the proper easements, right-of-ways, and permits prior to issuing Notice to Proceed and commencing the Contract Time, and in failing to obtain the same promptly during the course of the Work and in a manner not to interfere with the sequence and performance of the Work;

g. In failing to provide 2 dumpsite;

h. In directing CCI to perform various aspects of work required by PennDOT without providing compensation;

i. In failing to accurately depict or locate the underground utilities throughout the Site;

j. In failing to provide a "winter shutdown" as promised during the Mandatory Pre-Bid Conference, and

k. In discriminating against CCI on the basis of sex, as alleged in greater detail below.

199. Because the Authority has withheld payment to CCI in bad faith, arbitrarily and vexatiously, CCI is entitled to penalty, reasonable attorney fees and expenses.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XXII: CIVIL RIGHTS ACTION
(Equal Protection Clause/Sex Discrimination)

200. The averments set forth in Paragraphs 1 through 199 above are incorporated herein by reference as if set forth in full.

201. This Count is brought pursuant to Title 42 of the United States Code, Section 1983.

202. Continental Construction, Inc., is a "person" entitled to the protections of the Fourteenth Amendment to the United States Constitution.

203. CCI has been a Woman-owned Business Enterprise ("WBE") since 1995, and has been certified as such by the Pennsylvania Department of Transportation and Department of General Services.

204. Throughout the course of its dealings with CCI, the Authority and its male agents while acting within the scope of their authority, under color of law, and as a matter of Authority policy and/or custom, consistently, willfully and purposefully discriminated against CCI with malice, on the basis of sex, in that:

a. CCI was treated differently than the other contractor, a non-WBE, performing work for the Authority at the same time and at the same Site, as the other contractor was determined to be Substantially Complete prior to its work being fit for its intended use, as the other contractor was provided a "winter shutdown," as the other contractor was permitted to use alternate materials, as the other contractor's subcontractors were approved without delay, and as the other contractor was permitted to communicate with the Engineer orally;

b. The Engineer refused to communicate with the female-owner of CCI, other than in writing, and directed the female-owner of CCI to put all communications in writing;

c. The Authority and its male agents issued oral comments indicating a general disrespect for women, and especially women involved in the construction industry;

d. The Authority and its male agents issued oral comments reflecting doubt that CCI could perform the scope of work set forth in the Contract due to the fact that its Owner is female;

e. The Authority and its male agents attempted to intimidate and "bully" the female owner of CCI; and

f. In corresponding with CCI in writing, the Authority and its male agents repeatedly referred to the female owner of CCI as "MS Marzella."

205. As a person entitled to the protections of the Fourteenth Amendment to the United States Constitution, CCI is entitled to equal protection and treatment from governmental or municipal agencies, including the Authority.

206. Because the Authority failed to treat CCI equally, and as otherwise alleged above, CCI's performance of Work was delayed, disrupted, and CCI was forced to work out-of-sequence, without the cooperation of the Authority or Engineer, all of which caused CCI to incur additional costs and damages as set forth throughout this Complaint.

207. Because the Authority failed to treat CCI equally, and as otherwise alleged above, the Authority has violated the equal protection clause of the Fourteenth Amendment to the United States Constitution, and is therefore liable pursuant to 42 U.S.C. §1983.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus punitive damages, reasonable attorney fees, and costs of this suit.

A JURY TRIAL IS DEMANDED.

Respectfully Submitted:

Kevin J. McKeon
Fluke, Weiers & Schmitt, P.C.
1400 The Bank Tower
Pittsburgh, PA 15222
Attorney for the Plaintiff

VERIFICATION

I, Julee Marzella, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. These statements are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

FILED
2:30
AUG 0 3 2001
William A. Shaw
Prothonotary

1cc - Atty Nadled
2cc - Atty McKeon
pd - $80.00 Cash
J. Masell

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant.

EXHIBIT A TO COMPLAINT

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon, Esquire
Pa. I.D. #76232

FLUKE, WEIERS & SCHMITT, P.C.
Firm I.D. #029

1400 The Bank Tower
Pittsburgh, PA 15222
(412) 261-3800

JURY TRIAL DEMANDED

FILED
AUG 03 2001
William A. Shaw
Prothonotary

PROJECT MANUAL

FOR:

CONTRACT 2000-01

SANITARY SEWER CONSTRUCTION PROJECT

FOR:

WALLACETON-BOGGS MUNICIPAL AUTHORITY

LOCATED IN:

WALLACETON BOROUGH
AND
BOGGS TOWNSHIP
CLEARFIELD COUNTY, PENNSYLVANIA

PREPARED:

DECEMBER 1999

COMMONWEALTH OF PENNSYLVANIA
REGISTERED PROFESSIONAL
ROBERT MARK BRUCE
ENGINEER
PE-043934-E

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

600 Science Park Road • State College, Pennsylvania 16803 • (814) 237-6518 • FAX (814) 237-1488

ENVIRONMENTAL ENGINEERING • CIVIL ENGINEERING • LANDSCAPE ARCHITECTURE • LAND SURVEYING

SECTION 00500
AGREEMENT

THIS AGREEMENT is dated as of the 21 day of June, in the year 2000, by and between the

WALLACETON-BOGGS MUNICIPAL AUTHORITY
BOX 97
WEST DECATUR, PA 168778

Hereinafter, called the OWNER, and

Continental Construction Inc.
P.O. Box 126
Johnsonburg Road
Ridgway, PA 15853

Hereinafter, called the CONTRACTOR.

The OWNER and the CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.1 CONTRACTOR shall perform the Work as specified or indicated in the Contract Documents. The Work is as described in Section 01010 - Summary of Work. The Wallaceton-Boggs Municipal Authority Sanitary Sewer Construction Project for which the work under the Contract Documents may be whole or only a part is generally described as the installation of a sanitary sewer collection system in the borough of Wallaceton and the Township of Boggs, Clearfield County, Pennsylvania, including all required and related appurtenances and including pavement and other surface restoration.

ARTICLE 2 - ENGINEER

2.1 The project was designed by Sweetland Engineering & Associates, Inc. who is to act as the OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to the ENGINEER in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

3.1 The Work will be substantially completed within one-hundred-eighty (180) days after the date when the Contract Time commences as provided in Paragraph 2.03 of the Standard General Conditions, and completed and ready for final payment in accordance with Article 14 of the Standard General Conditions within two-hundred-forty (240) days after the date when the Contract Time commences.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the Standard General Conditions. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by the OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER $800.00 for each day that expires, after the time specified in Paragraph 3.1 above, after the date of Substantial Completion until the Work is substantially complete. After Substantial Completion, if the CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the time specified in Paragraph 3.1 above for completion and readiness for final payment or any proper extension thereof granted by the OWNER, the CONTRACTOR shall pay the OWNER $700.00 for each day that expires after the time specified in Paragraph 3.1 above for completion and readiness for final payment.

ARTICLE 4 - CONTRACT PRICE

4.1 OWNER will pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the amounts determined pursuant to paragraphs 4.2 and 4.3 below.

4.2 Total Amount for work:

One Million Eight Hundred Eighty Seven Thousand Four Hundred Twenty Two Dollars and Ninety Five Cents ($1,887,422.95).

4.3 As provided in Paragraph 11.9 of the Standard General Conditions, estimated quantities, if applicable, are not guaranteed, and determinations of actual quantities and classification are to be made by the OWNER and/or ENGINEER as provided in Paragraph 9.10 of the Standard General Conditions. Unit prices have been computed as provided in Paragraph 11.9.2. of the Standard General Conditions.

4.4 All specific cash allowances are included in the above prices and have been completed in accordance with Paragraph 11.8 of the Standard General Conditions.

ARTICLE 5 - PAYMENT PROCEDURES

5.1 The CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the Standard General Conditions. Applications for Payment will be processed by the ENGINEER as provided in the Standard General Conditions.

5.2 The OWNER will make progress payments based upon amount of Work complete-in-place in accordance with the Bid Prices in the Bid Schedule and/or Change Order. The CONTRACTOR shall submit an Application for Payment to the ENGINEER, for recommendation by the ENGINEER to the OWNER, once a month during construction, as provided in Paragraphs 5.2.1 and 5.2.2 herein. Quantity(s) of the Work completed shall be based upon measurements taken by the ENGINEER (Resident Project Representative) in accordance with the provisions of the Contract Documents. Payments will be made in accordance with Article 14 of the Standard General Conditions (for Unit Price work based on the number of units complete-in-place) or as amended by the Supplemental

Conditions. **No payment will be made for stored materials and/or equipment (not yet installed).**

5.2.1 Prior to Substantial Completion, progress payments will be based upon the total cost of the Work completed-in-place less the retainage percentages indicated below but, in each case, less the aggregate of payments previously made and less such amounts as the ENGINEER shall determine, or the OWNER may withhold, in accordance with Paragraph 14.7 of the Standard General Conditions or as otherwise provided by the Contract Documents.

5.2.1.a Retainage shall be ten percent (10%) of the total amount of the Work completed until fifty percent (50%) of the Work has been completed provided, however, that the character and progress of the Work has been satisfactory to the OWNER and/or ENGINEER, on recommendation by the ENGINEER, and there is no specific cause for greater withholding.

5.1.1.b Retainage shall be five percent (5%) of the total amount of the Work completed after fifty percent (50%) of the Work has been completed provided, however, that the character and progress of the Work has been satisfactory to the OWNER and/or ENGINEER, on recommendation by the ENGINEER, and there is no specific cause for greater withholding.

5.1.1.c The total amount of retainage shall not be more than ten percent (10%) of the total Contract Price unless there is specific reason(s) for greater withholding.

5.2.2. In the event that a dispute arises between the OWNER and the CONTRACTOR, which dispute is based on increased costs incurred by one CONTRACTOR occasioned by delays or other actions of another CONTRACTOR, additional retainages in the sum of one and one-half times the amount of any possible liability may be withheld by the OWNER from the CONTRACTOR until such times as a final resolution is agreed to by all parties directly or indirectly involved, unless the CONTRACTOR causing the additional claim furnishes a Bond satisfactory to the OWNER to indemnify OWNER against the claim.

5.2 Final Payment

Upon final completion and acceptance of the Work in accordance with Paragraph 14.13 of the Standard General Conditions, the OWNER shall pay the remainder of the Contract Price as recommended by the ENGINEER in accordance with said Paragraph 14.13.

If the work is substantially completed, the ENGINEER shall issue a certificate of completion and a final certificate for payment and the OWNER shall make payment in full within sixty (60) days thereafter, except as provided herein by Article 5, less only one and one-half (1-1/2) times such amount as is required to complete any then remaining, uncompleted, minor items, which amount shall be certified by the ENGINEER and upon receipt by the OWNER of any guarantee bonds which may be required, in accordance with the Contract Documents, to insure proper workmanship for a designated period of time. The certificate given by the ENGINEER shall list in detail each and every uncompleted item with a reasonable cost of completion. Final payment of any amount so withheld for the completion of the minor items shall be paid forthwith upon completion of the items in the certificate of the ENGINEER.

ARTICLE 6 - INTEREST

6.1 All moneys not paid when due as provided in Article 14 of the Standard General Conditions or Supplementary Conditions shall bear interest at the rate of six percent (6%) per annum.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In order to enter into this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed herein by Article 8) and the other related data identified in the Bidding Documents including "technical data".

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all Federal, State, and Local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in the Standard General Conditions. CONTRACTOR accepts the determination set forth in the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to relay as provided in the Standard General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that the OWNER and the ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance of furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

7.5 CONTRACTOR is aware of the general nature of the work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

7.6 CONTRACTOR has correlated the information known to the CONTRACTOR, information and observations obtained from visits to the site, reports, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

7.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the ENGINEER is acceptable to the CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between the OWNER and the CONTRACTOR concerning the Work consist of the following:

8.1 This Agreement.

8.2 Exhibits to this Agreement.

8.3 Performance, Payment, Maintenance, and other Bonds, and Insurance Certificates.

8.4 Notice to Proceed.

8.5 Standard General Conditions.

8.6 Supplementary Conditions.

8.7 Specifications (as listed in the Table of Contents).

8.8 Drawings (as listed in Section 01000 - Schedule of Drawings).

8.9 Addenda numbers 1 to 2, inclusive.

8.10 CONTRACTOR's Bid.

8.11 Documentation submitted by CONTRACTOR prior to Notice of Award.

8.12 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to Paragraphs 3.5 and 3.6 of the Standard General Conditions.

The documents listed in Paragraph 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 3.5 and 3.6 of the Standard General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the Standard General Conditions and Supplemental Conditions will have the meanings indicated in therein.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 The OWNER and the CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the OWNER and the CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.

9.5 The Supplementary Conditions provide for charging the CONTRACTOR for costs associated with any request for substitution made by the CONTRACTOR. The Standard General Requirements provides for charging the CONTRACTOR for costs associated with review of any submittals which are classified as excess re-submittals; that is, any re-submittal beyond the first. CONTRACTOR agrees to compensate the OWNER for such charges by allowing deductions from CONTRACTOR's progress payments.

9.6 Contractor will allow access by the EPA Grantee or subgrantees, EPA, the Comptroller of the United States, or their authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to the Contract for the purpose of audit, review or examination in accordance with 40 CFR 31.36 (i)(10). Additionally, all project and related records shall be retained for three (3) years after receipt of final payment, per 40 CFR 31.36(i)(10).

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in quadruplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All potions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This AGREEMENT will be effective on 21 June, 2000 (which is the Effective Date of the Agreement.)

OWNER: WALLACETON-BOGGS MUNICIPAL AUTHORITY

By: _____ Chairman (Title) 06/21/00 (Date)

Attest: _____ Sec/Treas (Title) 6-21-00 (Date)

CONTRACTOR: Continental Construction, Inc.

By: _____ President (Title) 6-15-2000 (Date)

Attest: _____ Sec./Treas. (Title) 6-15-2000 (Date)

(Corporate Seal)

(Corporate Seal)

NOTE: If CONTRACTOR is a corporation, an affidavit giving the principal the right to sign the Agreement must accompany the executed Agreement as indicated below.

Address for giving notices (Owner):

WALLACETON-BOGGS
MUNICIPAL AUTHORITY
P.O. BOX 97
WEST DECATUR, PA 16878

Address for giving notices (Contractor):

Continental Construction, Inc.
P.O. Box 126, Johnsonburg Road
Ridgway, PA 15853

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
: **ss.**
COUNTY OF Elk :

On this, the 15th day of June, 2000, a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared Richard J. Marzella who acknowledged himself to be the President of Continental Construction, a Corporation, and that as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Mary C. Bowers
Notary Public

My Commission Expires: 9-27-2003

Notarial Seal
Mary C. Bowers, Notary Public
[illegible], Elk County
My Commission Expires Sept. 27, 2003
Member, Pennsylvania Association of Notaries

END OF SECTION 00500

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

And

Issued and Published Jointly By

AMERICAN CONSULTING ENGINEERS COUNCIL

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

This document has been approved and endorsed by:

The Associated General Contractors of America

Construction Specifications Institute

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed from setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda's issued prior to receipt of Bids)

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provision of paragraph 1.03 in the case of Unit Price Work).

14. *Contract* Times--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environment Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (41 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreements.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyl's

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and

constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Changes Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 *Terminology*

A. *Intent of Certain Terms or Adjectives*

1. Whenever in the Contract Documents the terms "as allowed, " "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. *Day*

1. The work "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. *Defective*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meanings are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

add 2-02

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later, than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *CONTRACTOR's Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have know thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5. See Add 1 2.05C

2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made

to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, document, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 *Reference Standards*

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids) except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy

unless CONTRACTOR knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically state in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

   a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

   b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized by one or more of the following ways; (I) a Field Order; (ii) ENGINEER's approvals of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABLITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR or any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

   1. those reports of explorations and tests of subsurface conditions at or contiguous to the

See Add #1 00800-2

Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in paragraph 4.03A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants, shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated, or was not shown or indicated with reasonable accuracy

in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

See 4.04C Add #1 00800-3

4.05 *Reference Points*

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.05B See Add #1 00800-3

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data " contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was note shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying and special conditions under which such Work may be resumed safely. If OWNER and

CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the

Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance required by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance required by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, and Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

4. claims for damages insured by reasonable available personal injury liability coverage which are sustained; (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions

or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20.

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 *OWNER's Liability Insurance*

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Document.

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Condition, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following peril or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER.

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to

each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be noted as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 *Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insured (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for;

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering and loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interest may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace.*

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting parting shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER 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 or received from the superintendent shall be binding on CONTRACTOR.

6.02 *Labor; Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

See Add 1 00800-8

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with and provision of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article

12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. *"Or-Equal" Items:* If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that; (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items*

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered an proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other that CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* if a specific means method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis or reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed.

6.06.B.1
See Add 1

No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations. 6.06.C.1 - See Add 1

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier, which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 *Patent Fees and Royalties*

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in 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 the use in the performance of the Work and if to the actual knowledge of OWNER 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 OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to 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.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement, CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

See Add 1 00800 - 9

6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performances of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustments in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 *Taxes*

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

See Add # 1 00800 - 10

6.11 *Use of Site and Other Areas*

A. *Limitation of Use of Site and Other Areas*

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder, to the extent caused by or based upon CONTRACTOR's performance of the Work.

See Add 1 00800-9

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment, and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 *Safety and Protection*

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction

4. See Add 1

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners or adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, 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 of omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault of negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the

prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. *Submittal Procedures*

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

   a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

   b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

   c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

   d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements

of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. *ENGINEER's Review*

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 *Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or

2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will Constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;

2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;

4. use or occupancy of the Work or any part thereof by OWNER;

5. any acceptance by OWNER or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. 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 therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A. 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 such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work* See Add #1

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with 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 the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit an proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. The specific matters to be covered by such authority and responsibility will be itemized; and

3. The extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06. *Insurance* See Add'l

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 *Limitations on OWNER's Responsibilities*

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER's Representative*

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work

ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitation thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirement of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extents, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR, ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matter before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

See add 1

9.09 *Decisions of Requirements of Contract Documents and Acceptability of Work*

A. 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, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, 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 ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final 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.

9.10 *Limitations of ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum of amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provision of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intentions to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to 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 within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and

CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultant (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

   a The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements, the rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressive, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the even giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any party of CONTRACTOR's capital expenses, including interest on

CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, and Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 *Cash Allowances*

A. 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 performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparisons of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item or Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER in entitled to a decrease in

Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE: CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *CONTRACTOR's fee:* The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work;

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR or OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or
2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or in action's of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or test.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part there of) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, test, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observations, 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 pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing and or satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement or Work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. 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 Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

13.05 *OWNER May Stop the Work*

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, and other individual or entity, or any surety for, or employee or agent of any of them.

13.05 A.1
Add 1

13.06 *Correction or Removal of Defective Work*

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, and Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges or engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges or engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values* See Add 1

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Application for Payments*

1. At least 20 days before the date established for each progress payment (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 of the Application and accompanied by such supporting documentation as is required by the Contract Documents. 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 a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's

legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications*

1. ENGINEER will, within 10 days after receipt of each Application of Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

   c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in s far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not hereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedure of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

   a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due* see Add #1

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

   a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

   b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

   c. there are other items entitling OWNER to a set-off against the amount recommended; or

   d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a. through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongly withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 *CONTRACTOR's Warranty of Title*

A. 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 OWNER no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare to deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections,

ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER 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 ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete, and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment*

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or

other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts of releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER, or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. *Review of Application and Acceptance*

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary correction and resubmit the Application for Payment.

C. *Payment Becomes Due* See Add #1

1. ~~Thirty~~ 45 days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 *Final Completion Delayed*

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or correct is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, 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 CONTRACTOR to ENGINEER with the Application for 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.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing

14.07.B.1.a

obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *OWNER May Suspend Work*

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 *OWNER May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.01.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER 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 exceed all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 *OWNER May Terminate For Convenience*

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminated the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of

termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damages directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provision of paragraph 9.09 and 10.05, 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.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will 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 the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will 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 applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

A. The duties and obligation imposed by these General Conditions and the rights and remedies available thereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are

otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

A. All representations, indemnification's, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Document, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

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SECTION 00800
SUPPLEMENTARY CONDITIONS

PART I AMENDMENTS TO GENERAL CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions (hereinafter, General Conditions) of the Construction Contract (No. 1910-8, 1996 edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

ARTICLE 1 - DEFINITIONS

The terms used in these Supplementary Conditions which are defined in the General Conditions, have the meaning assigned to them in the General Conditions. The following definition(s) are added to the General Conditions:

1.01.A.46

Add the following language to paragraph 1.01.A.46 of the General Conditions:

Underground facilities may be further defined and modified pursuant to the provisions of Pennsylvania Act 187 of 1996, as referenced elsewhere in the Contract Documents.

Add the following definitions to Article 1 of the General Conditions.

1.01.A.51 Conditions of the Contract - The Combined General Conditions and Supplementary Conditions.

1.01.A.52 Project Manual - The Advertisement for Bids, Instructions to Bidders, Bid Form, Agreement, Bonds, General Conditions, Supplementary Conditions, Specifications, and Appendices.

1.01.A.53 Products - New materials, machinery, components, equipment, fixtures, systems, and any other item which will become or has become a physical portion of the Work. The term "products does not include machinery and equipment used for preparation, fabrication, conveying, or erection of the Work. The term "Products" may include materials, equipment, or components removed from existing facilities that may, if specifically permitted by the Contract Documents, be reused in the Work.

1.01.A.54 General Conditions - Engineers' Joint Contract Documents Committee (EJCDC) Document No. 1910-8 (1990 Edition) "Standard General Conditions of the Construction Contract".

ARTICLE 2 - PRELIMINARY MATTERS

SC-2.02

Amend the first sentence of paragraph 2.02 of the General Conditions to read as follows:

Owner shall furnish to Contractor up to three (3) copies of the Contract Documents as are reasonably necessary to the execution of the Work (with additional copies to be purchased from the Engineer).

SC-2.05.C.

Delete paragraph 2.05.C of the General Conditions in its entirety and insert the following in its place:

2.05.C Before any Work at the site is started. Contractor shall deliver to Owner, with copies to Engineer and each additional insured identified in Article 5 of the Supplementary Conditions, certificates of insurance (and other evidence requested by Owner) which Contractor is required to purchase and maintain in accordance with paragraphs 5.01, 5.02, 5.03, 5.04 and 5.06.

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

SC-4.02.

Delete paragraph 4.02.A. of the General Conditions in its entirety and insert the following in its place:

4.02.A In the preparation of Drawings and Specifications, Owner or Owners consultants have relied upon:

4.02.A.1 The following reports of explorations and tests of subsurface conditions and drawings of physical conditions at the site of the work.

- Test Boring Logs prepared by CMT Laboratories which were based upon limited soil/test borings conducted under the direction of Sweetland Engineering & Associates, Inc.
- Wetland Delineation Report prepared by Cedar Run Environmental Services, Inc.

4.02.A.2. The following drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of the work.

- None

SC-4.04.

Add a new paragraph immediately after paragraph 4.04.B of the General Conditions:

4.04.C All of the provisions stated in paragraph 4.04. - Underground Facilities may be modified, deleted, or superseded entirely by Pennsylvania Act No. 187 of 1996 (PA One-Call Act), as amended and the provisions of Section 01010 - Summary of Work. The stricter provisions of either this section, Act No. 187, or Section 01010 shall govern in the event of conflicts or interpretations between the provisions.

SC-4.05.

Add a new paragraph immediately after paragraph 4.05. of the General Conditions:

4.05.A Contractor shall ~~identify, locate, and~~ protect all property boundary markers. If removal is required during the construction, Contractor shall be responsible for accurate replacement by professionally qualified personnel (and/or registered professional land surveyor).

ARTICLE 5 - BONDS AND INSURANCE

Add the following language in the applicable sections of Paragraph 5.04 of the General Conditions:

SC-5 .04.A.

Add the following limits of insurance required by paragraph 5.03 of the General Conditions immediately after Paragraph 5.04.A.

Contractor shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

Worker's Compensation:	Statutory
Applicable Federal:	Statutory
Employer's Liability: (Each accident; Disease - each employee; disease - aggregate)	$100,000 Each Occurrence/ $500,000 Aggregate

5.04.A.3., 5.04.A., 5.04.A.5, Contractors Liability Insurance under Paragraphs 5.04.A.3 through 5.04.A.5 of the General Conditions which shall also include completed operations and product liability coverage and eliminate the exclusion with respect to the property under the care, custody and control of Contractor.

(1) Bodily Injury:	$1,000,000 $2,000,000	Each Occurrence Annual Aggregate
(2) Property Damage; (including Flooding Explosion, Collapse and Underground Coverage)	$1,000,000 $2,000,000	Each Occurrence Annual Aggregate
(3) Personal and Adver- (Per Person/Organization) tising Injury, with employment exclusion deleted	$1,000,000	Annual Aggregate
(4) Products, Completed Operations	$1,000,000	Annual Aggregate

5.04.A.6. Comprehensive Automobile Liability, including all owned (private and others), hired and non-owned vehicles:

(1) Bodily Injury	$l,000,000 $1,000,000	Each Person Each Accident
(2) Property Damage	$l,000.000	Each Accident
(3) Combined Single Limit (BI/PD)	$2,000,000	Each Accident

SC 5.04.B

5.04.B.1 Add immediately after 5.04.B.1 to read as follows:
The insurance required by Paragraphs 5.04.A.3. through 5.04.A.6. shall include Boggs Township and Wallaceton Borough County Commissioners, Wallaceton-Boggs Municipal Authority, Sweetland Engineering & Associates, Inc. and Pennsylvania Infrastructure Investment Authority as additional insureds.

Add a new paragraph immediately after paragraph 5.04.B.4. of the General Conditions, which is to read as follows:

5.04.B.1. The Contractual Liability coverage required by Paragraph 5.04.B.4.1. of the General Conditions shall provide coverage for not less than the following amounts:

(1) General Aggregate:	$2,000,000
(2) Each Occurrence (Bodily Injury and Property Damage):	$l,000,000

Add a new paragraph immediately after paragraph 5.04.B.7. of the General Conditions, which is to read as follows:

5.04.B.8. Contractor may purchase and maintain excess liability insurance in the umbrella form in order to satisfy the limits of liability required for the insurance to be purchased and maintained in accordance with paragraph 5.04.B. Evidence of such excess liability shall be delivered to Owner in accordance with paragraph 2.7 in the form of a certificate indicating the policy numbers and limits of liability of all underlying insurance. The umbrella liability insurance shall have a combined single limit of not less than $5,000.000.

SC-5.05.

Delete paragraph 5.05. of the General Conditions in its entirety and insert the following in its place:

5.05.A. Contractor shall purchase and maintain a separate Owner's Protective Liability policy, issued to Owner at the expense of Contractor, including Owner, Engineer and consultants as named insured. This insurance shall provide coverage for not less than the following units:

5.05.A.1.	Bodily Injury	$1,000,000	Each Occurrence
5.05.A.2 .	Property Damage	$1,000,000	Each Occurrence
		$1,000,000	Annual Aggregate

SC-5 .06.

Delete paragraph 5.06.A. of the General Conditions including subparagraphs 5.06.A.1 through 5.06.A.4 and 5.06.A.7, in its entirety and insert the following in its place:

5.06.A Contractor shall purchase and maintain property insurance upon the Work at the site in the full amount of the Contract Price (subject to such deductible amounts as may be provided in these Supplementary Conditions or required by Laws and Regulations). This insurance shall:

5.06.A. 1 Include the interests of Owner, Contractor, Subcontractors, Engineer, Consultants, and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured:

5.06.A.2 Be written on a Builder's Risk "all risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and

malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions.

5.06.A.3 Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of attorneys, engineers, and architects).

5.06.A.4 Cover materials and equipment in transit for incorporation in the Work or stored at the Project site or at another location that was agreed to in writing by the Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by the Engineer.

5.06.A.7 Be maintained in effect until final payment is made unless otherwise agreed to in writing by the Owner, the Contractor, and the Engineer with thirty (30) days written notice to each other additional insured to whom a certificate of insurance has been issued.

SC-5 .06.B

Delete paragraph 5.06.B of the General Conditions in its entirety and insert the following in its place:

5.06.B Contractor shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which shall include the interests of Owner, Contractor, Subcontractors, Engineer, Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

SC-5.06.C.

Delete paragraph 5.06.C. of the General Conditions in its entirety and insert the following in its place:

5.06.C All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Contractor in accordance with Paragraphs 5.6 and 5.7 shall contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to Owner and Engineer and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.11.

SC-5.06.E

Delete paragraph 5.06.E of the General conditions in its entirety.

SC-5.08
Delete paragraph 5.08 of the General Conditions in its entirety.

SC-5.09.

Delete paragraph 5.09 of the General Conditions in its entirety and insert the following in its place:

5.09.A. If the Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Contractor in accordance with this Article 5 on the basis of its not complying with the Contract Documents, Owner will notify Contractor in writing thereof within ten (10) days of the date of delivery of such certificates to Owner in accordance with paragraph 2.7. Contractor shall provide such additional information in respect of insurance provided as Owner may reasonably request. If the Contractor does not purchase or maintain all of the bonds and insurance required of the Contractor by the Contract Documents, the Contractor shall notify the owner in writing of such failure to purchase prior to the start of the work, or of much failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the Owner may elect to obtain equivalent bonds or insurance to protect Owner's interest at the expense of the Contractor and a charge order shall be issued to adjust the price accordingly.

SC – 5.10

Add a new paragraph immediately after paragraph 5.10.A of the General conditions which is to read as follows:

5.10.B If the Contract Price or Contract Time is changed in accordance with General Conditions, Article 10, Owner may require that Contractor's bonds and insurance policies be modified to reflect such changes. Any resulting changes in Contractor's bonds and insurance costs will be adjusted in accordance with Paragraph 11.01.A.5.i of the General Conditions.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

SC-6.02.

Add the following new paragraphs immediately after paragraph 6.02.A of the General Conditions:

6.02.A.1 This provision is subject to the applicable provisions of the Contract Work Hours and Safety Standards Act, Public Law 87-581, 87th Congress. No Contractor or

Subcontractor contracting for any part of the Work shall require or permit any laborer or mechanic to be employed on the Work in excess of forty (40) hours in any work week, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of forty (40) hours in such work week, as the case may be.

6.02.A.2 Except as may be otherwise required by law, all claims and disputes pertaining to the classification of labor employed on the project under this Contract shall be decided by the Pennsylvania Department of Labor and Industry or other governmental agency having jurisdiction.

6.02.A.3 Contractor shall employ only competent persons to do the work and whenever Owner shall notify Contractor, in writing, that any person on the Work appears to be incompetent, unfaithful, disorderly, or otherwise unsatisfactory, such person shall be removed from the project and shall not again be employed on it except with the consent of Owner.

6.02.A.4 If Owner consents to Contractor working during non-regular hours or on Saturday, Sunday, or any legal holiday, Contractor shall reimburse Owner for wages, salaries, and expenses paid to Owner's and Engineer's personnel which, in the Owner's judgment, are required to be present at the Project site during the Contractor's Work. Contractor's reimbursement to Owner for these extra personnel costs will be in the form of deduction from a progress payment.

SC-6 .06

Add a new paragraph immediately after paragraph 6.06.B of the General Conditions which is to read as follows:

6.06.B.1 The Contractor shall provide, at the time of submission of the Bid, a tabulation of the identity of the subcontractors, suppliers and other persons and organizations which are to furnish the principal items of equipment and services for the Work.

SC-6.06

Add new paragraph immediately after Paragraph 6.06.C of the General Conditions which is to read as follows:

6.06.C.1 Owner or Engineer may furnish to any such Subcontractor. Supplier or other person or organization, to the extent practicable, information about amounts paid on their behalf to Contractor in accordance with Contractor's Applications for Payment on account of the particular Subcontractor's, Supplier's, other person's or other organizations Work.

SC-6.08.

Add the following language at the end of paragraph 6.08.A of the General Conditions:

Owner will obtain permits as indicated in Section 01010 - Summary of Work. Owner obtained permits may be attached to the Contract Documents for information purposes only. Where applicable, the Contractor may be subject to certain requirements of these permits in connection with the Work. The Contractor shall carefully examine and consider Owner obtained permits and their implications, if any, on performance and execution of the Work.

SC-6.09

Add a new paragraph immediately after paragraph 6.09.A of the General Conditions which is to read as follows:

6.09.A.I If the Contract Price exceeds $25,000.00 or if standard federal laws require, the Contractor shall comply with all applicable wage rate laws and regulations as included in section 00900 of the Contract Documents.

6.09.A.2 The Contractor is subject to the provisions of the Pennsylvania Steel Products Procurement Act of 1978, P.L. 6, as amended. The Act and amendments require that the Contractor use or furnish only steel products (as defined in the Act and amendments) which have been produced in the United States.

6.09.A.3 The Contractor is subject to the provisions of Pennsylvania Act 247 of 1972, as amended, relating to the prevention of environmental pollution and the preservation of public natural resources.

6.09.A..4 The Contractor is subject to the provisions of Pennsylvania Act 287 of 1974, as amended by Act 38 of 1991, as amended by Act 187 of 1996, which requires contractors to notify public utilities prior to starting excavation or demolition work.

SC-6.10.

Add the following language at the end of paragraph 6.10.A of the General Conditions:

The Contractor shall be responsible for the payment of all taxes required by law on all materials, tools, apparatus, equipment, fixtures, services, and incidentals which nay be purchased or used for the purpose of performing the Work. Owner may be exempt from sales and use taxes for certain items to be incorporated into the Work. Contractor shall obtain legal advice to determine how and to what extent the Owner's tax exemption may be utilized by the Contractor. Owner will provide, at Contractor's request, required documentation to assist Contractor in obtaining any applicable tax exemptions.

In addition to the foregoing, but without limiting the scope of this paragraph, the Contractor shall pay for all local taxes including business privilege, gross receipts and other miscellaneous taxes assessed by the County, school district, or municipality in which the project is located. No taxes shall be borne by the Owner pursuant to the PA Municipalities Authorities Act and 72 P.S. 4821.

SC-6.13.

Add the following language at the end of paragraph 6.13.A.2 of the General Conditions:

In the event of temporary suspension of the Work, or during inclement weather, or whenever Engineer may direct; Contractor shall, and shall cause Subcontractors, to protect carefully the Work and materials against damage or injury from the weather. If, in the opinion of Engineer, any portion of Work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any Subcontractors to so protect the Work, such Work and materials shall be removed and replaced at the expense of Contractor.

SC-6.20.

Delete paragraph 6.20.C of the General Conditions in its entirety and insert the following in its place:

6.20.C The obligations of the Contractor under Paragraph 6.20.A shall not extend to the liability of the Engineer or Engineer's Consultants and agents arising out of the preparation of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.

ARTICLE 7 - OTHER WORK

SC-7.01.

Delete the last sentence of Paragraph 7.01.A and subsections 7.01.A.1 and 7.01.A.2 of the General Conditions in its entirety.

SC-7 .02.

Delete paragraph 7.02 of the General Conditions in its entirety and insert the following in its place:

7.02.A The General Construction Contractor shall be designated the Construction Coordinator. The Construction Coordinator shall have coordination responsibility for all contracts which are in progress during the Work.

This responsibility shall consist of:

7.02.A.1 Preparation of an overall progress schedule covering the work of all prime Contractors on the Project (GC-2.6.I and General Requirements).

7.02.A.2 Surveying to locate building corners, construction benchmarks, and other required Project control points (GC-4.4 and General Requirements).

7.02.A.3 Coordinating storage of all equipment and materials on site (GC- 6.16 and General Requirements).

7.02.A.4 Cleaning entire Project site, both during construction and upon completion (GC-6.17 and General Requirements).

7.02.A.5 Meeting all Special Requirements (General Requirements Section 01010).

7.02.A.6 Scheduling and coordinating the work of all prime contractors on the project (GC-7.4 and General Requirements).

7.02.A.7 Requesting Certificate of Substantial completion and scheduling closeout inspections for entire Project (GC-I4.8 and General Requirements).

7.02.A.8 Coordinating prime contractors' work on list of items to be completed (punch list) (GC-I4.8 and General Requirements).

7.02.A.9 Assuming responsibility for granting use of part of Project to Owner before completion of entire Project (GC-14.10).

7.02.A.10 Providing water and sanitary facilities for entire Project (General Requirements).

7.02.A.11 Coordinating locations for field offices and parking areas for all contractors' personnel (General Requirements).

7.02.A.12 Coordination of system start-up and training of Owner's operating personnel (General Requirements).

7.02.A.13 Sediment and erosion control measures for entire Project (General Requirements).

7.02.A.14 Any other applicable requirements as provided in General Requirements or General Conditions and Supplementary Conditions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

SC-8. 06

Delete paragraph 8.06 of the General Conditions in its entirety.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

SC-9 .08.

Delete paragraph 9.08 of the General Conditions in its entirety and insert the following in its place:

9.08.A Engineer will have authority to determine the actual quantities and classifications of items of Unit Price Work performed by Contractor, and the written decisions of Engineer in such matters will be final, binding on Owner and Contractor (except as modified by Engineer to reflect changed factual conditions).

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

SC-13.05.

Add a new paragraph immediately after paragraph 13.05.A of the General Conditions which is to read as follows:

13.05.A.1 If the Owner stops Work under paragraph 13.05.A, Contractor shall not be entitled to an extension of Contract Time or increase in Contract Price.

ARTICLE 14 - PAYMENTS TO THE CONTRACTOR AND COMPLETION

SC-14.02.

Revise first sentence to read:

14.02.A At least twenty (20) days before the date of presentation of the application for payment to OWNER, with ENGINEER's recommendation, (but not more than once a month).

14.02.A Delete second sentence in its entirety.

SC-14.02.A

14.02.A.2 Add new paragraphs immediately after paragraph 14.02.A.2 of the General Conditions which are to read as follows:

14.02.A.2.a No materials or supplies for the Work shall be purchased by Contractor or Subcontractor subject to or under a conditional sale contract or other agreement by which an interest is retained by the seller. Contractor warrants that he has good title to all materials and supplies used by him in the Work, free from all liens, claims or encumbrances.

14.02.A.2.b Contractor shall indemnify and hold harmless Owner from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnisher of machinery and parts thereof, equipment, power tools, and all supplies incurred in the furtherance of the performance of this Contract. Contractor shall, at Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived.

SC-14.02.C

Delete the paragraph 14.02.C.1 of the General Conditions in its entirety and insert the following:

14.02.C.1 Forty Five (45) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due and when due will be paid by Owner to Contractor.

SC-14. 07.B.

Add new paragraph 14.07.B.1.a after paragraph 14.07.B.1 of the General Conditions which is to read as follows:

14.07.B.1.a Final acceptance shall be governed by the provisions of the Pennsylvania Public Works Contract Regulation Law, 73 P.S., 1627 and 73 P.S., 1623, as amended.

SC- 14.07.C

Revise first sentence in 14.07.C to read the following:

14.07.C Forty Five (45) days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

SC-15.02.

Add a new paragraph immediately after paragraph 15.02.B of the General Conditions which is to read as follows:

15.02.B.1 If the Work to be done under this Contract shall be abandoned, or if this Contract or any part thereof shall be sublet without the previous written consent of

Owner, or if the Contract or any claim thereunder shall be assigned by Contractor otherwise than as herein specified, or at any time Engineer shall certify in writing to Owner that the rate of progress of the Work or any part thereof is unsatisfactory or that the work or any part thereof is unnecessarily or unreasonably delayed.

ARTICLE 16 - DISPUTE RESOLUTION

SC-16.01

Delete Paragraph 16.01.A of the General Conditions in its entirety and insert the following in its place:

16.01.A All claims, disputes, and other matters in questions arising out of, or relating to, the Contract Documents or Contract Drawings or a breach thereof, shall be settled by litigation in the County Court of Common Pleas having jurisdiction in the location of the Project.

END OF SECTION 00800

APPENDIX A

Soil Erosion & Sedimentation Pollution Control Plan Narrative

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SOIL EROSION AND SEDIMENT POLLUTION CONTROL PLAN NARRATIVE

FOR

WALLACETON-BOGGS
WASTEWATER TREATMENT FACILITY

PREPARED FOR

WALLACETON-BOGGS MUNICIPAL AUTHORITY

LOCATED IN

WALLACETON BOROUGH – BOGGS TOWNSHIP
CLEARFIELD COUNTY, PENNSYLVANIA

PROJECT # 3334-5

December 10, 1999

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Exhibits

A	Project Location Map
B	Soils Map and Soil Descriptions
C	Storm Drain Computations
D	Act 14 Notifications and General Permits

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PROJECT DESCRIPTION

This erosion and sedimentation pollution control narrative has been prepared by the staff of Sweetland Engineering & Associates, Inc., an environmental engineering, civil engineering, surveying, site design, and land planning firm. Our staff includes registered professional engineers, registered land surveyors, engineers-in-training, draftsmen, technicians, and support staff. The firm has over 29 years of experience in designing building sites for residential, commercial, industrial, and institutional facilities, as well as, municipal and public works projects located throughout Pennsylvania.

The proposed project involves the construction of the Wallaceton-Boggs Wastewater Treatment Facility, which consists of the treatment facility, approximately 42,000 LF of gravity and force main sewer lines, and an access roadway located in Wallaceton Borough and Boggs Township, Clearfield County, Pennsylvania. Refer to Exhibit A for an outline of the total project location. The project area is approximately 3.50 acres in size, consisting of the treatment plant construction and the easement area of the proposed sanitary sewer lines. An estimated 3.25 acres shall be disturbed during the construction project. The total new impervious area for the site is proposed at 0.20 acres or 6% of the property. This impervious coverage consists of the treatment facility and does not include the utility line construction. The site has an average slope from west to east of 7%. The project is scheduled to commence construction in the spring of 2000 and is expected to last one year.

Pursuant to the Commonwealth of Pennsylvania, Pennsylvania Code, Title 25 Environmental Resources Department of Environmental Protection, Chapter 92. National Pollutant Discharge Elimination System, the project falls under the requirements of a NPDES General permit. The permit application has been made with this Erosion and Sediment Pollution Control Plan review submission. Copies of the Act 14 Notifications can be found in Exhibit C at the rear of this narrative.

Additionally, the project requirements are such that Department of Environmental Resources General Permits GP-4, Intake and Outfall Structures , and GP-5, Utility Line Stream Crossings, are required and have been submitted for review.

This narrative addresses potential soil erosion resulting from earth disturbance associated with the proposed construction activities and the conveyance of stormwater runoff. Accelerated erosion of disturbed areas will be controlled during construction by temporary measures including the proper staging of earthmoving activities, a temporary construction entrance, the use of temporary seeding and mulching, and filter fabric fence. Additionally, the plan includes details and maintenance notes for trench plugs and top soil stockpiles.

Permanent control measures for the project will consist of permanent seeding, landscaping, and pavement structure construction.

STORMWATER MANAGEMENT

The project runoff is directed towards Laurel Run which is located directly to the east of the proposed Treatment Plant. No stormwater management is proposed for the project due to its proximity to Laurel Run and the negligible increases in runoff.

SOILS INFORMATION

Soils identified within the project area and as mapped by the "Soil survey of Clearfield County, Pennsylvania are as follows:

ErB – Ernest Silt Loam, ErC – Ernest Silt Loam, Up – Udorthents, smoothed
CoC – Cookport Channery Loam, CoB – Cookport Channery Loam, GIC – Gilpin Channery Silt Loam, GIB – Gilpin Channery Silt Loam, 3-8 percent slopes, HbD – Hazleton Very Stony Loam, RcD – Rayne-Gilpin complex, BxB – Brinkerton Very Stony Silt Loam, CxD – Cookport very stony loam, Ph – Philo Silt Loam, CxB – Cookport very stony loam, HbF – Hazleton very stony loam, HaD – Hazleton channery loam, RbF – Rayne channery silt loam

Refer to Exhibit B for the Soils Map. The soils information provided is general information only for the soils series and no intensive on-site investigation of the soils was conducted. It is the responsibility of the CONTRACTOR to verify actual site soil conditions. According to the U.S.D.A. "Soil Survey for Clearfield County," the soils in the project area are described in the Appendix B.

The pertinent site capability/subclass classifications as designated by the NRCS are:

Capability I – soils that have few limitations that restrict their use.
Capability II – soils that have moderate limitations that reduce the choice of plants or that require moderate conservation practices.
Capability III – soils that have severe limitations that reduce the choice of plants or that require special conservation practices or both.
Capability IV – soils that have very severe limitations that reduce the choice of plants, require very careful management or both.
Capability V – soils that are subject to little or no erosion but have other limitations, impractical to remove, that limit their use largely to pasture, woodland, or wildlife habitat.
Capability VI – soils that have severe limitations that make them generally unsuited to cultivation and limit their use largely to pasture, woodland, or wildlife habitat
Capability VII – soils that have very severe limitations that make them generally unsuited to cultivation and limit their use largely to pasture, woodland, or wildlife habitat
Capability VIII – soils and landforms have limitations that preclude their use for commercial plants and restrict their use to recreation, wildlife habitat, water supply, or esthetic purposes.
Subclass e – the main limitation is erosion related

Subclass w – the main limitation is water related
Subclass s – the main limitation is shallow, draughty or stony soils
Subclass c – the main limitation is climate

MAINTENANCE SCHEDULE OF E&S CONTROLS

The erosion and sedimentation control measures shall be maintained until all soil disturbing activities cease and permanent stabilization of the disturbed areas is complete and accepted by the engineer, a representative of the Clearfield County Conservation District, and or a representative of the Pennsylvania Department of Environmental Resources. Permanent stabilization is defined as a uniform erosion resistant perennial vegetative cover of at least 70% of the entire disturbed area.

The contractor shall notify the Engineer immediately should he suspect that any sediment or erosion control device is not operating correctly.

It will be the responsibility of the CONTRACTOR to install and maintain all erosion and sedimentation control devices in accordance with the following schedule:

Filter Fence - Filter Fabric (silt) fence shall be installed where shown on the Contract Drawings or directed by Engineer and/or a Clearfield County Conservation District representative in the field during construction. Filter Fabric Fence shall be installed in accordance with the details included on the Construction Drawings that are included herein. The CONTRACTOR shall inspect the filter fabric fence weekly and after all rainfall or snowmelt runoff events. Sediment shall be removed and placed on a topsoil stockpile when the build up reaches one-half the height of the fence. Filter Fabric Fence that has been damaged or temporarily removed during construction activities shall be replaced in-kind. In the event that the fence fails to hold in any way (undermined or over-topped), due to unforeseen concentrated flows, the failed section will be replaced immediately with a rock filter outlet. After final removal, regrade and reseed with permanent seeding as required.

Rock Filter Outlet - The rock filter will be installed where a filter fabric fence or straw bale barrier fails to hold in any way (undermined or over-topped), due to unforeseen concentrated flows. The outlet shall be inspected weekly and after any rainfall or snowmelt runoff event and additional AASHTO #1 and/or AASHTO #57 stone shall be added so that the minimum dimensions can be maintained as shown on the plan details. In the event that a rock filter outlet fails, contact the engineer and Conservation District representative.

Const. Entrance - The stabilized construction entrance shall be installed where shown on the plan. The entrance shall be inspected weekly and additional AASHTO #1 stone shall be kept on site so that the minimum dimensions can be maintained throughout the project. Sediment tracked onto a public roadway

shall be removed at the end of each construction day and placed on the topsoil stockpile. No other entrance shall be used to gain access to the site by any construction, personal or delivery vehicles.

This plan shall not be considered all-inclusive and the CONTRACTOR shall take all necessary precautions to prevent sediment from leaving the site or entering off-site storm drains. When the Engineer, Clearfield County Conservation District representative, or Pennsylvania Department of Environmental Resources Representative determines that temporary erosion control measures are necessary that were not foreseen in the design stage, the Engineer shall be so notified and additional controls shall be implemented by the CONTRACTOR to reduce the erosion potential of the site. The CONTRACTOR shall be responsible to take whatever means necessary to establish permanent soil stabilization.

Any disturbed area on which activity has ceased and which will remain exposed for more than 20 days must be stabilized immediately. During non-germinating periods, mulch must be applied at the recommended rates. Disturbed areas which are not at finished grade and which will be redisturbed within one year may be stabilized in accordance with the temporary seeding specifications. Disturbed areas that are either at finished grade or will not be redisturbed within one year must be stabilized in accordance with the permanent seeding specifications.

TEMPORARY SEEDING

Rough graded areas and topsoil piles that will not be final graded and permanently seeded in less than 20 days from the time of exposure will be temporarily seeded using the following schedule:

-	Ag. Grade Lime	50 lbs. per 1,000 sq. feet
-	Fertilizer 10-20-20	11-12 lbs. per 1,000 sq. feet
-	Annual Rye Grass	1 lb. per 1,000 sq. feet
-	Hay or Straw Bales	3 tons per acre

Topsoil piles or rough graded areas that sit more than 20 days will be seeded with the above schedule. This seeding will provide temporary surface protection for the soil so as to reduce the amount and rate of surface water runoff and thereby reduce the yield of sediment material. Any soil tracked off-site and deposited onto public roadways shall be cleaned at the end of each construction day.

PERMANENT SEEDING

Permanent control measures to minimize erosion and sedimentation shall be through the stabilization of soil as soon as possible with perennial vegetation in non-roadway areas. Permanent seeding will be with a schedule and procedure as follows:

1. Rough grade and remove all debris, large stones, and construction materials.

2. Apply agricultural grade lime at minimum 4 tons per acre.

3. Apply basic fertilizer 10-20-20 at minimum 25 lbs. per 1000 sq. ft.

4. Till all above materials thoroughly into a 4"-6" soil depth.

5. Finish grade for seeding.

6. Apply starter fertilizer 10-10-10 at a minimum 20 lbs. per 1000 sq. ft. Work lightly into soil surface.

7. Apply seed at an application rate of 3-4 lbs. per 1,000 sq. ft. as follows:

   40% Nassau Kentucky Bluegrass
   20% Pennlawn Red Fescue
   20% Pennant Perennial Ryegrass
   20% Chateau Kentucky Bluegrass

8. Time of seeding: Spring (March 15 - May 15) *
   Fall (Aug. 15 - Oct. 1) *

9. Rake or drag to cover seed lightly.

10. Roll lightly to place seed in contact with the soil.

11. Apply Hay or Straw mulch at a rate of 3 tons per acre.

12. Mulch to be anchored according to the current Penn State University Agronomy Guide.

* If permanent seeding is not practical due to the time of year, disturbed area shall be seeded with an annual rye grass at a rate of 1 lb. Per 1,000 sq. feet and mulched with straw at a rate of 3 tons per acre.

UNDERGROUND UTILITY CONSTRUCTION GUIDELINES

NOTE: Any erosion control device disturbed during the underground utility construction shall be immediately repaired or replaced in-kind and stabilized.

Work crews and equipment for trenching, placement of pipe, plug construction, and backfilling shall be self contained and separate from clearing and grubbing and site restoration and stabilization processes.

1. Cleared areas shall be kept to a minimum practical distance ahead of construction.

2. Limit grubbing operations to a distance equal to two times the length of pipe installation that can be completed in a single work period.

3. Only excavation for the length of utility to be constructed each day shall be disturbed.

4. Topsoil shall be stripped and stockpiled separately from subsoil.

5. Excavated material shall be placed on the uphill side of the trench to prevent surface water from entering the trench. If water should enter the trench, it shall be pumped out into a Filter Bag facility for removing sediment from pumped water and directed towards areas that will not cause additional erosion.

6. It is anticipated the trench for all underground utilities will be backfilled daily, topsoil replaced and stabilized.

7. At the end of each construction day, excavated material shall be placed in a berm at the pipe end so that surface water will be directed away from the hole.

8. If the installation of active storm drain pipes (ones that connect to existing systems) is interrupted by inclement weather or nightfall, the pipe ends will be covered with filter fabric.

9. Should it be necessary to allow the trench to remain open (not backfilled daily), earth filled sacks shall be used at the required spacing as trench plugs where trench slopes exceed 5% and are less than 100%. (Refer to plan detail).

10. No trench shall be left open longer than 72 hours.

11. Permanent control measures (fertilizer, seed, lime and mulch) shall be placed over final graded areas within 10 days after completion of final grading.

STAGING OF EARTHMOVING ACTIVITIES

The CONTRACTOR shall meet with a representative from the Clearfield County Conservation District at least three (3) days prior to the intended start of construction and conduct a pre-construction conference to discuss project requirements.

Erosion and sedimentation controls (E&SC) must be constructed, stabilized and functional prior to the site disturbance within tributary areas of those controls. Only limited disturbance, including clearing and grubbing, will be permitted to provide access to the site for the construction of the E&SC controls.

The following measures shall be followed by the CONTRACTOR during the construction activities:

1. Install the temporary construction entrance as shown on the Contract Drawings. No other entrance shall be used to gain access to the site by any construction, personal or delivery vehicles.

2. Install the Filter Fabric Fence where shown on the Construction Drawings. Filter Fabric Fence shall be installed in accordance with the guidelines shown on the Construction Details and shall be parallel with the contours of the existing ground. Both ends of the fence must extend at least 8 feet upslope at 45 degrees to the main fence alignment.

3. Strip topsoil in the area where site preparation will begin. Stockpile topsoil where shown on plan. Place Filter Fabric Fence down-slope of the stockpile area. Refer to Item #2 above for further instructions on the installation of Filter Fabric Fence. The Engineer and the Clearfield County Conservation District must be notified in the event that the CONTRACTOR wishes to move or change the location of the topsoil stockpile. **NOTE: any materials removed from the site shall be taken to a site that has an approved soil erosion and sediment pollution control plan. No materials shall be removed from the site without express permission from the OWNER.**

4. In the event that the CONTRACTOR establishes an on-site Laydown/ Mobilization Area, provide a 4" thick gravel bed to stabilize the area.

5. Begin rough-grading operations and bring the site to the subgrade required and/or shown on the Construction Drawings as soon as possible. Any disturbed area which will remain idle for more than seven (20) consecutive days from the time disturbance shall be immediately seeded using the procedures outlined in the temporary seeding schedule. **All excavated material removed (or taken to) the site shall be taken to (or from) an area/site with an approved soil erosion and sediment pollution control plan.**

6. Begin construction of utilities. Install underground utilities in accordance with the Underground Utility Construction Guidelines.

7. Place subbase material in the access roadways and parking areas as soon as possible. Remove temporary construction entrance in conjunction with placement of subbase material in the same location. Pave access roadways and parking areas with bituminous base course (BCBC).

8. After the entire site has been stabilized and accepted by the Engineer, and a representative of the Clearfield County Conservation District and/or the Pennsylvania Department of Environmental Resources, filter fabric fences can be removed. Remove any other erosion control measures that have not been previously removed and seed and mulch immediately all disturbed area with permanent seed mixtures.

RECORD OF TRAINING AND EXPERIENCE
IN
EROSION AND SEDIMENTATION CONTROL METHODS AND TECHNIQUES

NAME OF PLAN PREPARER: Andrew S. Levine, P.E.

FORMAL EDUCATION:

Name of College or Technical Institute: The Pennsylvania State University
Curriculum or Program: Agricultural Engineering
Dates of Attendance: From 1/92 **to** 12/93
Degree Received: Bachelor of Science

OTHER TRAINING:

Name of training: Stormwater Runoff and Quality Management Symposium
Presented By: Penn State Continuing and Distance Education
Date: 9/19/94 - 9/20/94

EMPLOYMENT HISTORY:

Current Employer: Sweetland Engineering . **Telephone:** (814) 237 - 6518
Dates of Employment: From 11/98 **to** Present

Former Employer: PennTerra Engineering, Inc. **Telephone:** (814) 231 - 8285
Dates of Employment: From 10/94 **to** 10/98

RECENT EROSION AND SEDIMENTATION CONTROL PLANS PREPARED:

	#1	#2	#3
Name of Project:	Aquapenn	Serenity Court	Chestnut Ridge Sec. 4
County:	Centre	Centre	Centre
Municipality:	Boggs Twp.	College Twp.	Ferguson Twp.
EDP Number : (if applicable)	PAR10F028	PAR10F027	PAR10F034
Approving Agency:	CCCD	CCCD	CCCD

EXHIBIT A

Project Location Map

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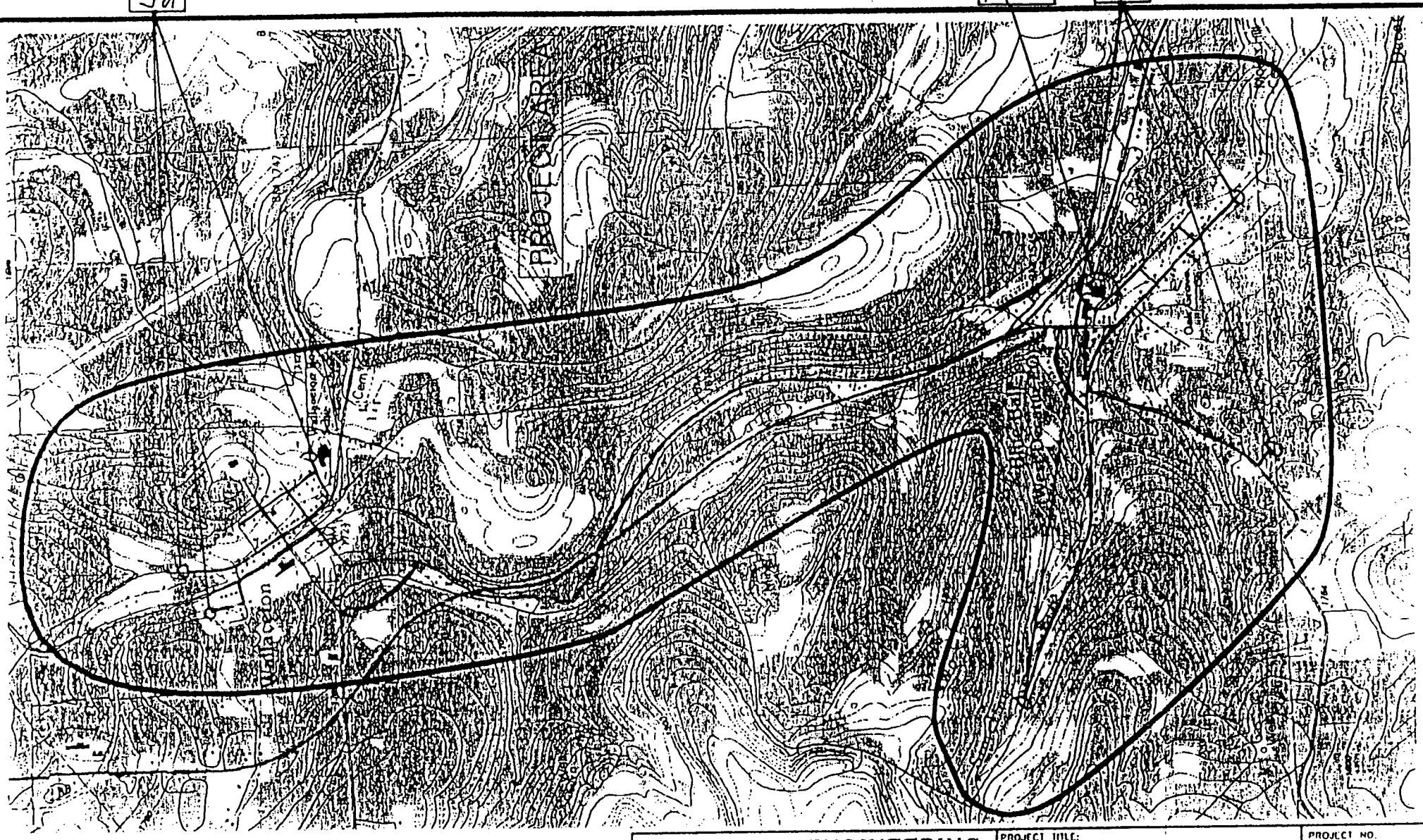

SWEETLAND ENGINEERING & ASSOCIATES, INC.

800 Science Park Road
State College, Pennsylvania 16803
(814)-237-8510 FAX:(814)-237-1468

PROJECT TITLE:

Wallaceton–Boggs Project Location Map

PROJECT NO. 3334

DATE: 10/22/98

SHEET NO. 1

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EXHIBIT B

Soils Map and Soil Descriptions

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Hazleton Very Stony Loam, 8 to 25 percent slopes

The soils of the Hazleton series are loamy-skeletal, mixed mesic Typic Dystrochrepts. They are deep and well drained and are on uplands. The soils formed in residual material weathered from gray and browns sandstone. Hazleton soils are on ridgetops and hillsides. Slopes range from 0 to 80 percent.

Hazleton soils are on the landscape with moderately well drained Cookport soils and poorly drained Nolo soils and Clymer soils, which contain less sand than Hazleton soils. None of those soils is loamy-skeletal throughout.

Typical pedon of Hazleton channery loam, in an area of Hazleton-Clymer channery loams, 3 to 8 percent slopes, in Girard Township, 6.75 miles north of Le Contes Mills, 1/4 mile west on Caledonia Pike from the junction of Caledonia Pike and Ames Road, 25 feet south, in a wooded area.

O1-3 inches to 1 inch:	Undecomposed leaf litter.
O2-1 inch to 0:	Decomposed organic matter.
A1-0 to 2 inches:	Black (10YR 2/1) channery loam; weak very fine granular structure; very friable; 15 percent coarse fragments; extremely acid; abrupt smooth boundary.
A2-2 to 4 inches:	Grayish brown (10YR 5/2) channery sandy loam; weak very fine granular structure; very friable; 20 percent coarse fragments; extremely acid; abrupt smooth boundary.
B21hir-4 to 7 inches:	Dark reddish brown (5YR 3/3) channery loam; weak very fine subangular blocky structure; friable; 15 percent coarse fragments; extremely acid; clear irregular boundary.
B22-7 to 15 inches:	Brownish yellow (10YR 6/6) Channery loam; weak very fine subangular blocky structure; friable; 15 percent coarse fragments; very strongly acid; clear wavy boundary.
B23-15 to 20 inches:	Brownish yellow (10YR 6/6) channery loam; weak very fine and fine subangular blocky structure; friable; 30 percent coarse fragments; very strongly acid; clear wavy boundary.
B24-20 to 29 inches:	Brownish yellow (10YR 6/6) very channery loam; moderate fine subangular and angular blocky structure; friable; 40 percent coarse fragments; very strongly acid; clear wavy boundary.
B25-29 to 40 inches:	Strong brown (7.5YR 5/6) very channery loam; moderate fine and medium subangular and angular blocky structure; friable; 50 percent coarse fragments; very strongly acid; clear wavy boundary.

B3-40 to 46 inches: Strong brown (7.5YR 5/6) very channery sandy loam; weak fine subangular blocky structure; friable; 60 percent coarse fragments; very strongly acid; clear wavy boundary.

C-46 to 55 inches: Strong brown (7.5YR 5/6) very channery sandy loam; massive; very friable; 80 percent coarse fragments; very strongly acid; clear wavy boundary.

R-55 inches: Light gray (10YR 7/2) sandstone bedrock.

The solum thickness ranges from 25 to 50 inches. The depth to bedrock is 40 inches or more. The content of coarse fragments ranges from 5 to 40 percent in the A horizon, 15 to 70 percent in the B horizon, and 35 to 80 percent in the C horizon. Reaction in unlimed areas ranges from strongly acid to extremely acid throughout.

The A1 horizon has hue of 10YR, value of 2 or 3, and chroma of 1 or 2. Some pedons have an Ap horizon that has hue of 10YR, value of 3 or 4, and chroma of 2 or 3. The A2 horizon has hue of 10YR, value of 4 or 5, and chroma of 1 through 4. The fine-earth texture of the A2 horizon is sandy loam or loam. Some pedons do not have an A2 horizon.

The B horizon has hue of 10YR or 7.5YR, value of 3 through 6, and chroma of 3 through 8. The fine-earth texture is sandy loam or loam. The Bhir horizon has hue of 5YR, value of 3 through 6, and chroma of 3 through 8. Some pedons have a Bir horizon instead of a Bhir horizon, and some pedons have neither. The fine-earth texture of the B horizon is loam or sandy loam.

The C horizon has hue of 5YR to 2.5YR, value of 4 through 6, and chroma of 4 through 6. The fine-earth texture is sandy loam, loam, or loamy sand.

Hazleton Very Stony Loam, 25 to 80 percent slopes

The soils of the Hazleton series are loamy-skeletal, mixed mesic Typic Dystrochrepts. They are deep and well drained and are on uplands. The soils formed in residual material weathered from gray and browns sandstone. Hazleton soils are on ridgetops and hillsides. Slopes range from 0 to 80 percent.

Hazleton soils are on the landscape with moderately well drained Cookport soils and poorly drained Nolo soils and Clymer soils, which contain less sand than Hazleton soils. None of those soils is loamy-skeletal throughout.

Typical pedon of Hazleton channery loam, in an area of Hazleton-Clymer channery loams, 3 to 8 percent slopes, in Girard Township, 6.75 miles north of Le Contes Mills, 1/4 mile west on Caledonia Pike from the junction of Caledonia Pike and Ames Road, 25 feet south, in a wooded area.

O1-3 inches to 1 inch:	Undecomposed leaf litter.
O2-1 inch to 0:	Decomposed organic matter.
A1-0 to 2 inches:	Black (10YR 2/1) channery loam; weak very fine granular structure; very friable; 15 percent coarse fragments; extremely acid; abrupt smooth boundary.
A2-2 to 4 inches:	Grayish brown (10YR 5/2) channery sandy loam; weak very fine granular structure; very friable; 20 percent coarse fragments; extremely acid; abrupt smooth boundary.
B21hir-4 to 7 inches:	Dark reddish brown (5YR 3/3) channery loam; weak very fine subangular blocky structure; friable; 15 percent coarse fragments; extremely acid; clear irregular boundary.
B22-7 to 15 inches:	Brownish yellow (10YR 6/6) Channery loam; weak very fine subangular blocky structure; friable; 15 percent coarse fragments; very strongly acid; clear wavy boundary.
B23-15 to 20 inches:	Brownish yellow (10YR 6/6) channery loam; weak very fine and fine subangular blocky structure; friable; 30 percent coarse fragments; very strongly acid; clear wavy boundary.
B24-20 to 29 inches:	Brownish yellow (10YR 6/6) very channery loam; moderate fine subangular and angular blocky structure; friable; 40 percent coarse fragments; very strongly acid; clear wavy boundary.
B25-29 to 40 inches:	Strong brown (7.5YR 5/6) very channery loam; moderate fine and medium subangular and angular blocky structure; friable; 50 percent coarse fragments; very strongly acid; clear wavy boundary.

B3-40 to 46 inches: Strong brown (7.5YR 5/6) very channery sandy loam; weak fine subangular blocky structure; friable; 60 percent coarse fragments; very strongly acid; clear wavy boundary.

C-46 to 55 inches: Strong brown (7.5YR 5/6) very channery sandy loam; massive; very friable; 80 percent coarse fragments; very strongly acid; clear wavy boundary.

R-55 inches: Light gray (10YR 7/2) sandstone bedrock.

The solum thickness ranges from 25 to 50 inches. The depth to bedrock is 40 inches or more. The content of coarse fragments ranges from 5 to 40 percent in the A horizon, 15 to 70 percent in the B horizon, and 35 to 80 percent in the C horizon. Reaction in unlimed areas ranges from strongly acid to extremely acid throughout.

The A1 horizon has hue of 10YR, value of 2 or 3, and chroma of 1 or 2. Some pedons have an Ap horizon that has hue of 10YR, value of 3 or 4, and chroma of 2 or 3. The A2 horizon has hue of 10YR, value of 4 or 5, and chroma of 1 through 4. The fine-earth texture of the A2 horizon is sandy loam or loam. Some pedons do not have an A2 horizon.

The B horizon has hue of 10YR or 7.5YR, value of 3 through 6, and chroma of 3 through 8. The fine-earth texture is sandy loam or loam. The Bhir horizon has hue of 5YR, value of 3 through 6, and chroma of 3 through 8. Some pedons have a Bir horizon instead of a Bhir horizon, and some pedons have neither. The fine-earth texture of the B horizon is loam or sandy loam.

The C horizon has hue of 5YR to 2.5YR, value of 4 through 6, and chroma of 4 through 6. The fine-earth texture is sandy loam, loam, or loamy sand.

Hazleton Channery Loam, 15 to 25 percent slopes

The soils of the Hazleton series are loamy-skeletal, mixed mesic Typic Dystrochrepts. They are deep and well drained and are on uplands. The soils formed in residual material weathered from gray and browns sandstone. Hazleton soils are on ridgetops and hillsides. Slopes range from 0 to 80 percent.

Hazleton soils are on the landscape with moderately well drained Cookport soils and poorly drained Nolo soils and Clymer soils, which contain less sand than Hazleton soils. None of those soils is loamy-skeletal throughout.

Typical pedon of Hazleton channery loam, in an area of Hazleton-Clymer channery loams, 3 to 8 percent slopes, in Girard Township, 6.75 miles north of Le Contes Mills, 1/4 mile west on Caledonia Pike from the junction of Caledonia Pike and Ames Road, 25 feet south, in a wooded area.

O1-3 inches to 1 inch:	Undecomposed leaf litter.
O2-1 inch to 0:	Decomposed organic matter.
A1-0 to 2 inches:	Black (10YR 2/1) channery loam; weak very fine granular structure; very friable; 15 percent coarse fragments; extremely acid; abrupt smooth boundary.
A2-2 to 4 inches:	Grayish brown (10YR 5/2) channery sandy loam; weak very fine granular structure; very friable; 20 percent coarse fragments; extremely acid; abrupt smooth boundary.
B21hir-4 to 7 inches:	Dark reddish brown (5YR 3/3) channery loam; weak very fine subangular blocky structure; friable; 15 percent coarse fragments; extremely acid; clear irregular boundary.
B22-7 to 15 inches:	Brownish yellow (10YR 6/6) Channery loam; weak very fine subangular blocky structure; friable; 15 percent coarse fragments; very strongly acid; clear wavy boundary.
B23-15 to 20 inches:	Brownish yellow (10YR 6/6) channery loam; weak very fine and fine subangular blocky structure; friable; 30 percent coarse fragments; very strongly acid; clear wavy boundary.
B24-20 to 29 inches:	Brownish yellow (10YR 6/6) very channery loam; moderate fine subangular and angular blocky structure; friable; 40 percent coarse fragments; very strongly acid; clear wavy boundary.
B25-29 to 40 inches:	Strong brown (7.5YR 5/6) very channery loam; moderate fine and medium subangular and angular blocky structure; friable; 50 percent coarse fragments; very strongly acid; clear wavy boundary.

B3-40 to 46 inches: Strong brown (7.5YR 5/6) very channery sandy loam; weak fine subangular blocky structure; friable; 60 percent coarse fragments; very strongly acid; clear wavy boundary.

C-46 to 55 inches: Strong brown (7.5YR 5/6) very channery sandy loam; massive; very friable; 80 percent coarse fragments; very strongly acid; clear wavy boundary.

R-55 inches: Light gray (10YR 7/2) sandstone bedrock.

The solum thickness ranges from 25 to 50 inches. The depth to bedrock is 40 inches or more. The content of coarse fragments ranges from 5 to 40 percent in the A horizon, 15 to 70 percent in the B horizon, and 35 to 80 percent in the C horizon. Reaction in unlimed areas ranges from strongly acid to extremely acid throughout.

The A1 horizon has hue of 10YR, value of 2 or 3, and chroma of 1 or 2. Some pedons have an Ap horizon that has hue of 10YR, value of 3 or 4, and chroma of 2 or 3. The A2 horizon has hue of 10YR, value of 4 or 5, and chroma of 1 through 4. The fine-earth texture of the A2 horizon is sandy loam or loam. Some pedons do not have an A2 horizon.

The B horizon has hue of 10YR or 7.5YR, value of 3 through 6, and chroma of 3 through 8. The fine-earth texture is sandy loam or loam. The Bhir horizon has hue of 5YR, value of 3 through 6, and chroma of 3 through 8. Some pedons have a Bir horizon instead of a Bhir horizon, and some pedons have neither. The fine-earth texture of the B horizon is loam or sandy loam.

The C horizon has hue of 5YR to 2.5YR, value of 4 through 6, and chroma of 4 through 6. The fine-earth texture is sandy loam, loam, or loamy sand.

Rayne Channery Silt Loam, 25 to 65 percent slopes

The soils of the Rayne series are fine-loamy, mixed, mesic Typic Hapludults. They are deep and well drained and are on hilltops and sides of ridges. The soils formed in residuum weathered from shale, siltstone, and sandstone. Slopes range from 3 to 65 percent.

Rayne soils are on the landscape with moderately deep Gilpin soils moderately well drained Wharton soils, somewhat poorly drained Cavode soils, and poorly drained Armagh soils.

Typical pedon of Rayne silt loam, 8 to 15 percent slopes, in Pike Township, 2.5 miles north of Curwensville Borough, 200 feet southeast of the junction of Township Route 504 and township Route 517:

Ap-0 to 9 inches:	Dark brown (10YR 4/3) silt loam; weak medium granular structure; friable, slightly sticky, slightly plastic; 10 percent coarse fragments; strongly acid; clear wavy boundary.
B21-9 to 15 inches:	Dark yellowish brown (10YR 4/4) silt loam; weak very fine and fine angular blocky structure; friable, slightly sticky, slightly plastic; 10 percent coarse fragments; strongly acid; clear wavy boundary.
B22t-15 to 27 inches:	Yellowish brown (10YR 5/6) channery silt loam; weak fine and medium angular blocky structure; firable, sticky, plastic; thin discontinuous clay films on ped faces and in pores; 15 percent coarse fragments; very strongly acid; gradual wavy boundary.
B23t-27 to 35 inches:	Yellowish brown (10YR 5/6) channery silt loam; weak fine and medium angular blocky structure; friable, sticky, plastic; think clay films on ped faces; 20 percent coarse fragments; very strongly acid; clear wavy boundary.
B24t-35 to 38 inches:	Dark brown (7.5YR 4/4) channery silt loam; weak very fine and fine angular and subangular blocky structure; friable, slightly sticky, slightly plastic; thin discontinuous clay films on ped faces; 30 percent coarse fragments; strongly acid; clear wavy boundary.
B3-38 to 50 inches:	Dark brown (7.5YR 4/4) channery silt loam; weak fine and medium platy structure parting to weak very fine angular and subangular blocky; firm 45 percent coarse fragments; strongly acid; clear wavy boundary.
C-50 to 60 inches:	Dark brown (7.5YR 4/2) very channery silt loam; weak medium platy structure parting to weak very fine angular and subangular blocky; firm; 70 percent coarse fragments; very strongly acid; abrupt smooth boundary.
R-60 inches:	Dark grayish brown (10YR 4/2) shale bedrock.

The solum thickness ranges from 40 to 60 inches. The depth to bedrock is at least 40 inches. Coarse fragments make up 0 to 40 percent of the A and B2 horizons and 15 to 90 percent of the B3 and C horizons. Reaction in unlimed areas is very strongly acid or strongly acid throughout.

The Ap horizon has hue of 10YR, value of 3 through 5, and chroma of 2 through 4.

The B horizon has hue of 7.5YR or 10YR, value of 4 or 5, and chroma of 4 through 8. The fine-earth texture is silt loam, loam, or silty clay loam.

The C horizon has hue of 7.5YR to 2.5Y, value of 4 to 5, and chroma of 2 through 6. The fine-earth texture ranges from sandy loam to silty clay loam.

Brinkerton Very Stony Silt Loam, 0 to 8 percent slopes

The soils of the Brinkerton series are fine-silty, mixed, mesic Typic Fragiaqualfs. They are deep and poorly drained. The soils formed in silty colluvium from upland areas of gray and brown shale, siltstone, and sandstone. Slopes range from 0 to 8 percent.

Brinkerton soils are on the landscape with moderately well drained Ernest oils, somewhat poorly drained Cavode soils, and poorly drained Armagh soils. The Armagh and Cavode soils do not have a fragipan.

Typical pedon of Brinkerton silt loam, 0 to 3 percent slopes, in Brady Townhsip, 1.25 miles north of Luthersburg on Township Route 363, 800 feet west on Township Route 370 to Consolidated Gas Supply Corporation pipeline, 1,200 feet southwest along the pipeline, in a trench.

O1-2 inches to 1 inch:	Undecomposed hardwood leaf litter.
O2-1 inch to 0:	Black (10YR 2/2) partially decomposed organic matter.
A1-0 to 2 inches:	Black (10YR 2/1) silt loam; weak fine and medium granular structure; very friable, slightly sticky, slightly plastic; very strongly acid; abrupt smooth boundary.
A2-2 to 7 inches:	Light brownish gray (2.5Y 5/2) silt loam; common fine faint gray (2.5Y 6/0) mottles and many fine prominent yellowish brown (10YR 5/8) mottles; weak medium and coarse subangular blocky structure; friable, slightly sticky, plastic; very strongly acid; 5 percent coarse fragments; clear wavy boundary.
B21t-7 to 15 inches:	Grayish brown (10YR 5/2) silt loam; common fine faint gray (N 6/0) mottles and many fine prominent yellowish brown (10YR 5/8) blocky structure; friable, sticky, plastic; moderately thick continuous clay films on peds; very strongly acid; 5 percent coarse fragments; clear wavy boundary.
B22t-15 to 28 inches:	Grayish brown (2.5Y 5/2) silty clay loam; many fine and medium faint gray (N 6/0) mottles and common fine prominent yellowish brown (10YR 5/6) mottles; weak coarse subangular and angular blocky structure; friable, sticky , plastic; very strongly acid; common thick clay films on peds; common black (10YR 2/1) concretions on prism faces; 10 percent coarse fragments; gradual wavy boundary.
Bx1t-28 to 42 inches:	Grayish brown (2.5Y 5/2) silt loam; few fine faint gray (N 6/0) and yellowish brown (10YR 5/6) mottles; moderate very coarse prismatic structure parting to weak coarse and very coarse platy; firm, brittle, slightly sticky, plastic; gray (N 5/0) prism faces; common think clay films in pores and on ped faces; many fine and medium black (10YR 2/1)

concretions and ped exteriors; 10 percent coarse fragments; strongly acid; gradual wavy boundary.

Bx2t-42 to 47 inches: Grayish brown (10YR 5/2) silt loam; many fine faint gray (N 5/0) mottles and few fine prominent strong brown (10YR 5/6) mottles; moderate very coarse prismatic structure parting to weak coarse and very coarse platy; firm, brittle, slightly sticky, plastic; gray (N 5/0) prism faces ;common thin clay films in pores and on ped faces; 10 percent coarse fragments; medium acid; clear wavy boundary.

C-47 to 62 inches: Dark yellowish brown (10YR 4/4) loam; few fine faint light brownish gray (2.5Y 6/2) and yellowish brown (10YR 5/6) mottles; massive; friable, slightly sticky, slightly plastic; grayish brown (2.5Y 5/2) prism faces; thin patchy clay films in pores; many medium and coarse black (10YR 2/1) concretions; 10 percent coarse fragments; medium acid.

The solum thickness ranges from 40 to 50 inches. The depth to bedrock is more than 60 inches. The depth to the fragipan ranges from 18 to 30 inches. The content of coarse fragments ranges form 0 to 10 percent above the fragipan, from 2 to 20 percent in the fragipan, and from 10 to 90 percent in the C horizon. Reaction in unlimed areas I medium acid to very strongly acid.

Undisturbed pedons have a thin, dark A1 horizon underlain by a gray light grayish brown A2 horizon 2 to 5 inches thick. Some pedons have an Ap horizon with hue of 10YR through 2.5Y, value of 2 or 3, and chroma of 1 through 3.

The B horizon has hue of 10YR through 5Y, value of 5 or 6, and chroma of 1 or 2 and is mottled. The fine-earth texture of the B horizon generally is silty clay loam or silt loam. The Bx horizon is neutral cr has hue of 10YR through 2.5Y, value of 5 or 6, and chroma of 1 or 2 and is mottled. The fine-earth texture of the Bx horizon is silt loam, loam, or silty clay loam.

The C horizon has hue of 10YR or 2.5Y, value of 4 or 5 and chroma of 0 through 4 and has common to many mottles. The fine-earth texture is silt loam, silty clay loam, or loam.

Cookport Very Stony Loam, 0 to 8 percent slopes

The soils of the Cookport series are fine-loamy, mixed, mesic Aquic Fraguidults. They are deep and moderately well drained and formed in materials weathered from sandstone and siltstone. Cookport soils are on broad ridgetops. Slopes range from 0 to 25 percent.

Cookport soils are on the landscape with well drained Clymer, Hazleton, and Dekalb soils and poorly drained Nolo soils.

Typical pedon of Cookport channery loam, 3 to 9 percent slopes, in Lawrence Township, 8 miles north of Clearfield Borough, 2,000 feet west on Tyler Road from the junction of McGeorge and Tyler Roads, 30 feet south in a wooded area:

O1-2 inches to 1 inch:	Leaf litter.
O2-1 inch to 0:	Decomposed organic matter.
A1-0 to 1 inch:	Dark brown (7.5YR 3/2) channery loam; weak very fine granular structure; friable; 15 percent coarse fragments; very strongly acid; abrupt wavy boundary.
A2-1 to 3 inches:	Brown (10YR) 4/3) channery loam; weak very fine granular structure; friable; 15 percent coarse fragments; very strongly acid; clear wavy boundary.
B1-3 to 9 inches:	Yellowish brown (10YR 5/4) clay loam; weak very fine subangular blocky structure; friable, slightly sticky, slightly plastic; 5 percent coarse fragments; strongly acid; clear wavy boundary.
B21t-9 to 18 inches:	Yellowish brown (10YR 5/6) loam, weak fine subangular blocky structure; friable, slightly sticky, slightly plastic; few think discontinuous clay films on ped faces; 5 percent coarse fragments; strongly acid; clear wavy boundary
B22t-9 to 18 inches:	Yellowish brown (10YR 5/6) sandy loam; few fine distinct light gray (10YR 7/2) and reddish yellow (7.5YR 6/8) mottles; moderate fine and medium subangular blocky structure; friable, slightly sticky, slightly plastic; few think discontinuous clay films on ped faces; 10 percent coarse fragments; strongly acid; clear wavy boundary.
Bx1-22 to 30 inches:	Yellowish brown (10YR 5/6) channery sandy loam; few faint distinct reddish yellow (7.5YR 6/8) and yellowish red (5YR 5/8) mottles; weak very coarse prismatic structure parting to moderate medium angular blocky; firm brittle; 15 percent coarse fragments; strongly acid; clear wavy boundary.
Bx2-30 to 40 inches:	Strong brown (7.5YR 5/6) channery sandy loam; few fine distinct light gray (10YR 7/2) and yellowish red (5YR 5/8)

	mottles; many fine black concretions; weak very coarse prismatic structure parting to moderate medium angular blocky; firm, brittle; 20 percent coarse fragments; strongly acid; clear wavy boundary.
C-40 to 49 inches:	Dark yellowish brown (10YR 4//4) very channery sandy loam; few fine black concretions; massive; firm; 55 percent coarse fragments; strongly acid; clear wavy boundary.
R-49 inches:	Light brownish gray (10YR 6/2) and grayish brown (10YR 5/2) sandstone bedrock.

The solum thickness ranges from 28 to 40 inches. The depth to bedrock is 40 to 70 inches. The depth to the fragipan ranges from 16 to 27 inches. The content of coarse fragments ranges from 0 to 30 percent in the A and B horizons and from 0 to 60 percent in the C horizon. Reaction in unlimed areas is extremely acid to strongly acid throughout.

The A1 horizon has hue of 10YR, 7.5YR, or 2.5Y; value of 2 or 3; and chroma of 2 or 3. Some pedons have an Ap horizon that has hue of 10YR, 7.5YR, or 2.5Y; value of 4 or 5; and chroma of 3 through 6. The A2 horizon has hue of 10YR, 7.5YR, or 2.5Y; value of 4 or 5; and chroma of 3 or 4. Some pedons do not have an A2 horizon. The fine-earth texture of the, A horizon is loam, silt loam, or sandy loam.

The B2 horizon has hue of 10YR, 7.5YR or 2.5Y; value of 4 or 5; and chroma of 4 through 8. The fine-earth texture is loam, sandy loam, sandy clay loam, or clay loam. The Bx horizon has hue of 10YR, 7.5YR, or 2.5Y; value of 4 or 5; and chroma of 3 through 8. The fine-earth texture is loam, sandy loam, or sandy clay loam.

The C horizon has hue of 10YR or 2.5Y, value of 4 or 5, and chroma of 2 through 4. The fine-earth texture is loam, sandy loam, or fine sandy loam.

Cookport Very Stony Loam, 8 to 25 percent slopes

The soils of the Cookport series are fine-loamy, mixed, mesic Aquic Fraguidults. They are deep and moderately well drained and formed in materials weathered from sandstone and siltstone. Cookport soils are on broad ridgetops. Slopes range from 0 to 25 percent.

Cookport soils are on the landscape with well drained Clymer, Hazleton, and Dekalb soils and poorly drained Nolo soils.

Typical pedon of Cookport channery loam, 3 to 9 percent slopes, in Lawrence Township, 8 miles north of Clearfield Borough, 2,000 feet west on Tyler Road from the junction of McGeorge and Tyler Roads, 30 feet south in a wooded area:

O1-2 inches to 1 inch:	Leaf litter.
O2-1 inch to 0:	Decomposed organic matter.
A1-0 to 1 inch:	Dark brown (7.5YR 3/2) channery loam; weak very fine granular structure; friable; 15 percent coarse fragments; very strongly acid; abrupt wavy boundary.
A2-1 to 3 inches:	Brown (10YR) 4/3) channery loam; weak very fine granular structure; friable; 15 percent coarse fragments; very strongly acid; clear wavy boundary.
B1-3 to 9 inches:	Yellowish brown (10YR 5/4) clay loam; weak very fine subangular blocky structure; friable, slightly sticky, slightly plastic; 5 percent coarse fragments; strongly acid; clear wavy boundary.
B21t-9 to 18 inches:	Yellowish brown (10YR 5/6) loam, weak fine subangular blocky structure; friable, slightly sticky, slightly plastic; few think discontinuous clay films on ped faces; 5 percent coarse fragments; strongly acid; clear wavy boundary
B22t-9 to 18 inches:	Yellowish brown (10YR 5/6) sandy loam; few fine distinct light gray (10YR 7/2) and reddish yellow (7.5YR 6/8) mottles; moderate fine and medium subangular blocky structure; friable, slightly sticky, slightly plastic; few think discontinuous clay films on ped faces; 10 percent coarse fragments; strongly acid; clear wavy boundary.
Bx1-22 to 30 inches:	Yellowish brown (10YR 5/6) channery sandy loam; few faint distinct reddish yellow (7.5YR 6/8) and yellowish red (5YR 5/8) mottles; weak very coarse prismatic structure parting to moderate medium angular blocky; firm brittle; 15 percent coarse fragments; strongly acid; clear wavy boundary.
Bx2-30 to 40 inches:	Strong brown (7.5YR 5/6) channery sandy loam; few fine distinct light gray (10YR 7/2) and yellowish red (5YR 5/8)

	mottles; many fine black concretions; weak very coarse prismatic structure parting to moderate medium angular blocky; firm, brittle; 20 percent coarse fragments; strongly acid; clear wavy boundary.
C-40 to 49 inches:	Dark yellowish brown (10YR 4//4) very channery sandy loam; few fine black concretions; massive; firm; 55 percent coarse fragments; strongly acid; clear wavy boundary.
R-49 inches:	Light brownish gray (10YR 6/2) and grayish brown (10YR 5/2) sandstone bedrock.

The solum thickness ranges from 28 to 40 inches. The depth to bedrock is 40 to 70 inches. The depth to the fragipan ranges from 16 to 27 inches. The content of coarse fragments ranges from 0 to 30 percent in the A and B horizons and from 0 to 60 percent in the C horizon. Reaction in unlimed areas is extremely acid to strongly acid throughout.

The A1 horizon has hue of 10YR, 7.5YR, or 2.5Y; value of 2 or 3; and chroma of 2 or 3. Some pedons have an Ap horizon that has hue of 10YR, 7.5YR, or 2.5Y; value of 4 or 5; and chroma of 3 through 6. The A2 horizon has hue of 10YR, 7.5YR, or 2.5Y; value of 4 or 5; and chroma of 3 or 4. Some pedons do not have an A2 horizon. The fine-earth texture of the, A horizon is loam, silt loam, or sandy loam.

The B2 horizon has hue of 10YR, 7.5YR or 2.5Y; value of 4 or 5; and chroma of 4 through 8. The fine-earth texture is loam, sandy loam, sandy clay loam, or clay loam. The Bx horizon has hue of 10YR, 7.5YR, or 2.5Y; value of 4 or 5; and chroma of 3 through 8. The fine-earth texture is loam, sandy loam, or sandy clay loam.

The C horizon has hue of 10YR or 2.5Y, value of 4 or 5, and chroma of 2 through 4. The fine-earth texture is loam, sandy loam, or fine sandy loam.

Philo Silt Loam

The soils of the Philo series are coarse-loamy, mixed, mesic Fluvaquentic Dystrochrepts. They are deep and moderaely well drianed. They formed in recent loamy alluvial sediments weathered mainly from sandstone and shale. Slopes range from 0 to 3 percent.

Philo soils are on the landscape with well drained Pope soils and poorly drained Atkins soils.

Typical pedon of Philo silt loam, in Pike Township, 1.25 miles east of Curwensville Borough on PA Route 879, 600 feet east, in a field.

Ap-0 to 9 inches:	Very dark grayish brown (10YR 3/2) silt loam; moderate fine and medium granular structure; friable, slightly sticky, slightly plastic; 10 percent coarse fragments; neutral,; abrupt smooth boundary.
B21-9 to 19 inches:	Dark yellowish brown (10YR 4/4) silt loam; weak medium and coarse subangular blocky structure; friable, slightly sticky, slightly plastic; 5 percent coarse fragments; very strongly acid; gradual wavy boundary.
B22-19 to 31 inches:	Dark yellowish brown (10YR 4/4) silt loam; few fine faint light brownish gray (2.5Y 6/2) mottles and fine distinct strong brown (7.5YR 5/6) mottles; weak medium and coarse subangular blocky structure; friable, slightly sticky, slightly plastic; very few thin clay films in pores; 5 percent coarse fragments; very strongly acid; gradual wavy boundary.
B23-31 to 43 inches:	Dark yellowish brown (10YR 4/4) silt loam; common fine and medium distinct gray (10YR 5/1) and strong brown (7.5YR 5/6) mottles; weak fine and medium subangular blocky structure; friable, slightly sticky, slightly plastic; very few thin clay films in pores; 5 percent coarse fragments; very strongly acid; abrupt wavy boundary.
IIC-43 to 62 inches:	Grayish brown (10YR 5/2) gravelly sandy loam; common fine medium faint light brownish gray (10YR 6/2) and yellowish brown (10YR 5/6) mottles; massive; friable, slightly sticky, slightly plastic; 25 percent coarse fragments; very strongly acid.

The solum thickness ranges from 20 to 48 inches. The depth to low-chroma mottles ranges from 12 to 24 inches. The depth to bedrock is 40 inches or greater. The content of coarse fragments in the solum ranges form 0 to 20 percent. Reaction in unlimed areas ranges from very strongly acid to medium acid.

The A horizon has hue of 10YR or 7.5YR, value of 3 or 4, and chroma of 2 or 3.

The B horizon has hue of 10YR and 7.5YR, value of 4 through 6, and chroma of 4 through 6. The fine-earth texture ranges from silt loam to sandy loam.

The C horizon is neutral or has hue of 7.5YR to 2.5Y, value of 4 through 6, and chroma of 0 through 4. The fine-earth texture ranges from sand to silt loam.

EXHIBIT C

Act 14 Notifications and General Permits

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SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-2499

December 7, 1999

Board of Commissioners
Clearfield County
1 North Second Street
Clearfield, PA 16830

RE: **Act 14 Notification**
Wallaceton-Boggs Sewage Treatment Plant

Dear Council Members:

In accordance with Commonwealth of Pennsylvania Act 14, you are hereby advised that Wallaceton-Boggs Municipal Authority is in the process of applying to the Pennsylvania Department of Environmental Protection (PA DEP) for a "General N.P.D.E.S. Permit for Discharges of Stormwater Associated with Construction Activities" (PAG-2) to include a GP-4 and GP-5.

The General Permit will allow construction of a sewage treatment plant to be located in Boggs Township, Clearfield County, Pennsylvania.

Should you have any comments regarding this permit activity, please forward them to my attention.

Sincerely,

Sweetland Engineering & Associ

Andrew S. Levine, P.E.
Project Engineer/Manager

cc: File 3334-5

K:\PROJECTS\3334-5\Docs\Act 14 Letters\Clea

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Board of Commissioners
Clearfield County
1 North Second Street
Clearfield PA 16830

4a. Article Number
Z 342 545 367

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
12/9/99

5. Received By: *(Print Name)*

6. Signature: *(Addressee or Agent)*
X

8. Addressee's Address *(Only if requested and fee is paid)*

Is your RETURN ADDRESS completed on the reverse side?

PS Form 3811, December 1994 102595-98-B-0229 Domestic Return Receip

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-9299

December 7, 1999

Board of Supervisors
Boggs Township
P.O. Box 69
West Decatur, PA 16878

RE: **Act 14 Notification**
Wallaceton-Boggs Sewage Treatment Plant

Dear Council Members:

In accordance with Commonwealth of Pennsylvania Act 14, you are hereby advised that Wallaceton-Boggs Municipal Authority is in the process of applying to the Pennsylvania Department of Environmental Protection (PA DEP) for a "General N.P.D.E.S. Permit for Discharges of Stormwater Associated with Construction Activities" (PAG-2) to include a GP-4 and GP-5.

The General Permit will allow construction of a sewage treatment plant to be located in Boggs Township, Clearfield County, Pennsylvania.

Should you have any comments regarding this permit activity, please forward them to my attention.

Sincerely,

Sweetland Engineering & Associ

Andrew S. Levine, P.E.
Project Engineer/Manager

cc: File 3334-5

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Is your RETURN ADDRESS completed on the reverse side?

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- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Board of Supervisors
Boggs Township
P.O. Box 69
West Decatur, PA 16878

4a. Article Number
Z 342 545 368

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
12/9/99

5. Received By: *(Print Name)*
Denise Dabo

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X

PS Form 3811, December 1994 102595-98-B-0229 Domestic Return Receipt

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-9299

December 7, 1999

Borough Council Members
Borough of Wallaceton
P.O. Box 121
Wallaceton, PA 16876

RE: **Act 14 Notification**
Wallaceton-Boggs Sewage Treatment Plant

Dear Council Members:

In accordance with Commonwealth of Pennsylvania Act 14, you are hereby advised that Wallaceton-Boggs Municipal Authority is in the process of applying to the Pennsylvania Department of Environmental Protection (PA DEP) for a "General N.P.D.E.S. Permit for Discharges of Stormwater Associated with Construction Activities" (PAG-2) to include a GP-4 and GP-5.

The General Permit will allow construction of a sewage treatment plant to be located in Boggs Township, Clearfield County, Pennsylvania.

Should you have any comments regarding this permit activity, please forward them to my attention.

Sincerely,

Sweetland Engineering & Associ

Andrew S. Levine, P.E.
Project Engineer/Manager

cc: File 3334-5

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Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Borough Council Members
Borough of Wallaceton
P.O. Box 121
Wallaceton, PA 16876

4a. Article Number
Z 342 545 366

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X

PS Form 3811, December 1994 102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

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3630-PM-WQ0503 Rev. 7/98

FOR DEPT. USE ONLY

ACKNOWLEDGED:
DATE _____
GP _____

EXHIBIT C

NOTIFICATION TO USE
BDWM-GP-4
Intake and Outfall Structures

I/We, Wallaceton-Boggs Municipal Authority
(owner name(s))
hereby notify the Department of Environmental Protection of our intent to use

Drawing No. 3 to install a Penn DOT Type D-W

outfall structure
(description of intake or outfall structure)

across/along Laurel Run at a point approximately 600 feet east of L.R. 17122
(name of stream)

in West Decatur
(describe location)

in Boggs Township (municipality), Clearfield (county).

I/We have attached a LOCATION MAP similar to that shown on Drawing No. 1 indicating where the intake or outfall structure will be installed.

I/We certify that a copy of this notification was sent this day December 9, 1999 (date) to

Boggs Township (municipality) and Clearfield (county).

where the work will be performed.

Signed: _____
(owner or authorized representative)

P.O. Box 97
(owner address)

West Decatur, PA 16878

(814) 342-3626
(owner telephone number)

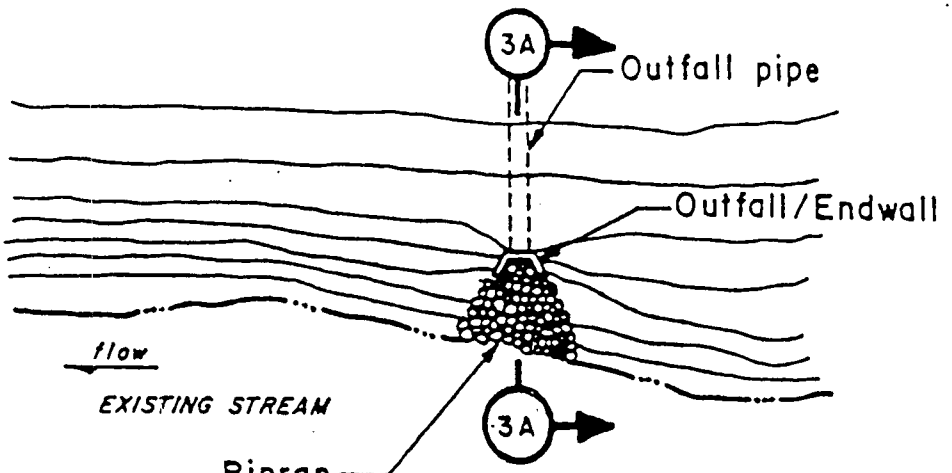
Send to one of the addresses on "Exhibit B" or the "County Conservation Districts" List.

GENERAL PERMIT: B.D.W.M. GP-4

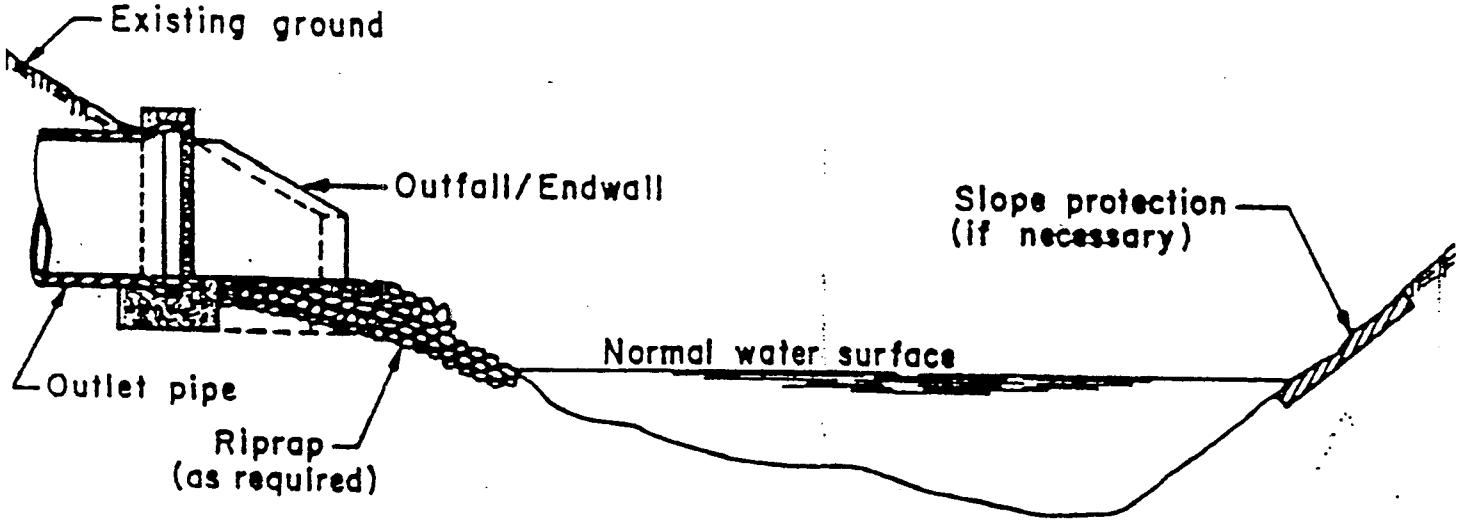
Dwg. No. 3

Intake and Outfall Structures

Outfall Type D - W Endwall



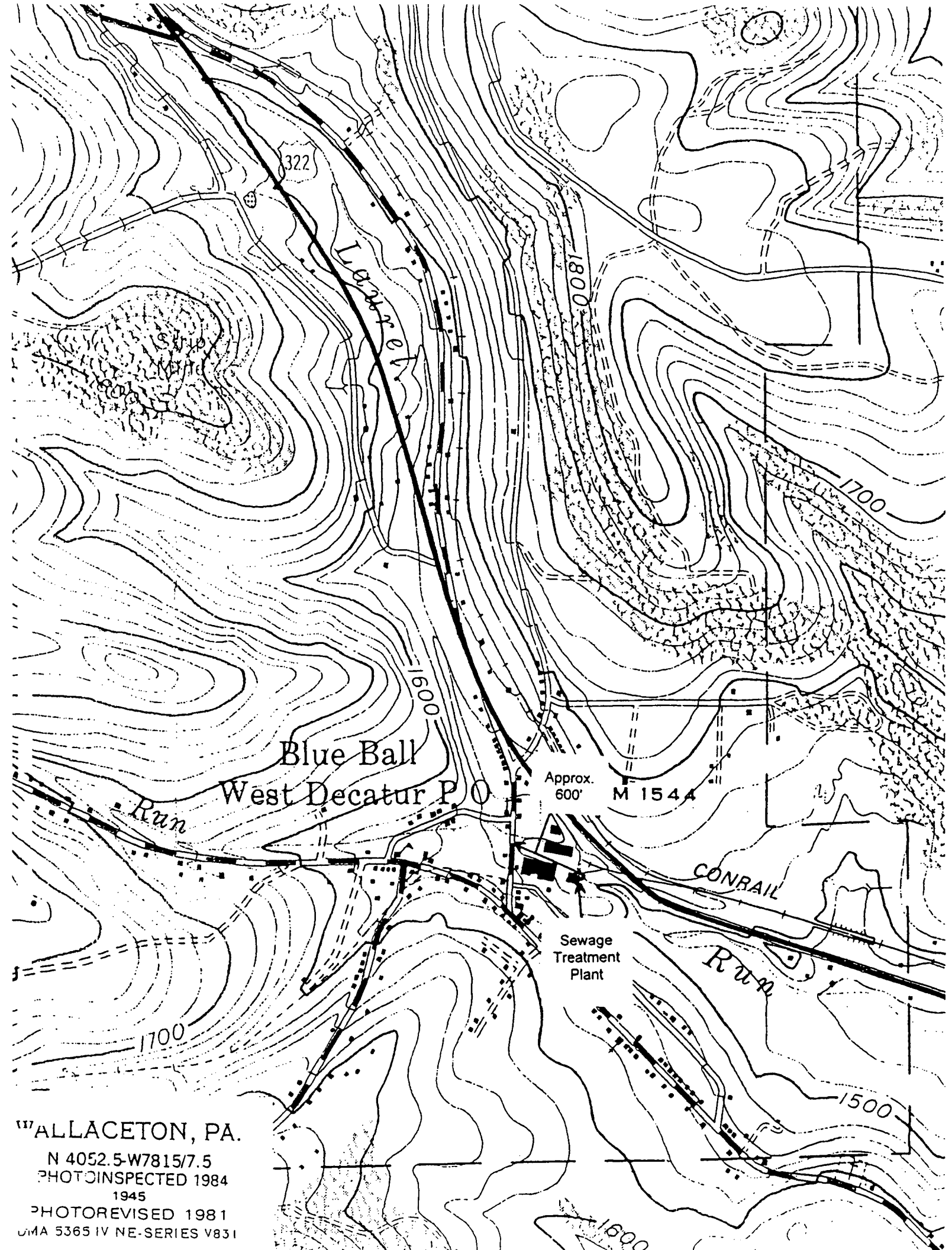
PLAN



SECTION 3A

NOTES:

Maximum size of pipe outfall 36 inches in diameter



WALLACETON, PA.
N 4052.5-W7815/7.5
PHOTOINSPECTED 1984
1945
PHOTOREVISED 1981
DMA 5365 IV NE-SERIES V831

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EXHIBIT C

Notification to Use
BDWM-GP-5
Utility Line Stream Crossings

I/We, Wallaceton-Boggs Municipal Authority, hereby notify the Bureau of Dams and (owner name(s))

Waterway Management of our intent to use Sample Drawing No. 1 to install

42,000 L.F. of Gravity Santiary Sewer, 8" PVC pipe
(size and description of utility line)

across/along Laurel Run, un-named streams, and wetland
(name of stream, body of water, or wetland)

at ~~approx~~ various points - see attached table
(describe location)

in Boggs Township & Wallaceton Borough (municipality) Clearfield (county)

I/We have attached a LOCATION MAP similar to that shown on the sample drawings indicating where the utility line will be installed.

I/We certify that a copy of this notification was sent this day 12/09/99 (date)

to Boggs Township & Wallaceton Borough (municipality), and Clearfield (county) in which the work will be performed.

Signed: [signature] (owner or authorized representative)

P.O. Box 97
(owner address)

West Decatur, PA 16878

(814) 243 - 3626
(owner telephone number)

I/We hereby notify the Bureau that BDWM-GP-8, Temporary Road Crossing will also be utilized during the installation of the utility line.

Signed: N/A

Send to

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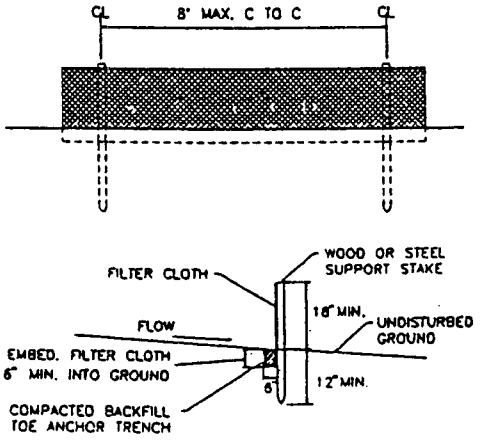
STANDARD WORK SHEET #3
FILTER FABRIC FENCE

PROJECT NAME: Wallaceton-Boggs Sanitary Sewer Construction Project
LOCATION: Wallaceton Borough, Boggs Township; Cleafield County
PREPARED BY: Sweetland Engineering & Assoc. DATE: 12-13-99 SHEET # ___ OF ___
CHECKED BY: _____ DATE: _____



FF-18 FILTER FABRIC FENCE

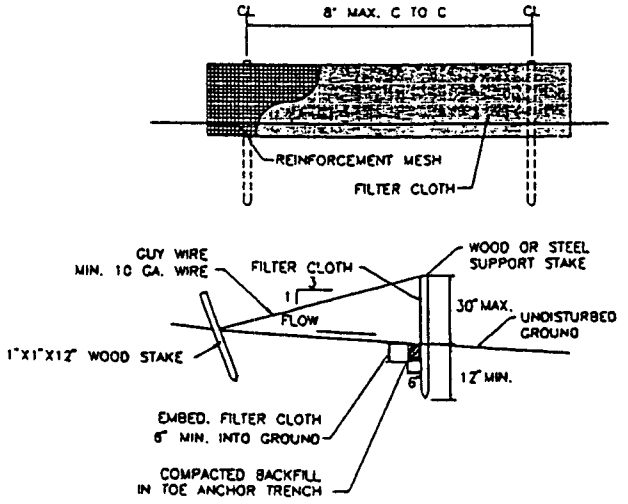
NOT TO SCALE

INSTALLATION

1. A TRENCH WILL BE PLOWED OR OTHERWISE EXCAVATED TO THE REQUIRED DEPTH WITH LITTLE, IF ANY, DISTURBANCE TO THE DOWNSLOPE SIDE OF THE TRENCH. THE BOTTOM OF THE TRENCH AND THE FENCE TOP WILL BE PLACED ON A LEVEL GRADE. WHEN IT IS NECESSARY TO CROSS SMALL DEPRESSIONS, THE TRENCH BOTTOM AND FENCE TOP EDGE MAY DEVIATE SLIGHTLY FROM THE LEVEL GRADE. GRADES IN SUCH SECTIONS WILL NOT EXCEED ONE PERCENT (1%), NOR WILL THE DEVIATION EXTEND FOR MORE THAN 25 FEET.
2. SUPPORT STAKES WILL BE DRIVEN TO THE REQUIRED DEPTH BELOW THE EXISTING GROUND SURFACE, AT SPECIFIED INTERVALS
3. STRETCH AND FASTEN FABRIC TO THE UPSLOPE SIDE OF THE SUPPORT STAKES. (IF A REINFORCED SECTION, FASTEN REINFORCEMENT MESH PRIOR TO FASTENING THE FABRIC).
4. WHERE ENDS OF THE FABRIC COME TOGETHER, THEY WILL BE OVERLAPPED, FOLDED AND STAPLED TO PREVENT SEDIMENT BYPASS
5. THE TOE ANCHOR WILL BE BACKFILLED AND COMPACTED TO A DENSITY EQUAL TO SURROUNDING SOILS.
6. IF CONSTRUCTING A REINFORCED SECTION, ATTACH GUY WIRES TO SUPPORT STAKES. PROVISIONS SHOULD BE MADE FOR EASY LOOSENING AND REMOVAL OF THE GUY WIRES TO ALLOW FOR ACCESS TO PERFORM MAINTENANCE WORK.

MAINTENANCE

1. THE FENCE INSTALLATION SHOULD BE INSPECTED AFTER EVERY PRECIPITATION EVENT. ANY NECESSARY REPAIRS WILL BE MADE IMMEDIATELY.
2. ACCUMULATED SEDIMENTS WILL BE REMOVED AS REQUIRED TO KEEP THE FENCE FUNCTIONAL. IN ALL CASES, REMOVE DEPOSITS WHERE ACCUMULATIONS REACH 1/2 THE ABOVE GROUND HEIGHT OF THE FENCE.
3. ALL UNDERCUTTING OR EROSION OF THE TOE ANCHOR WILL BE REPAIRED IMMEDIATELY WITH COMPACTED BACKFILL MATERIALS
4. ADHERE TO ANY MANUFACTURER'S RECOMMENDATIONS FOR REPLACING FILTER FABRIC FENCE DUE TO WEATHERING.



FF-30 FILTER FABRIC FENCE

NOT TO SCALE

NOTE: MAXIMUM FENCE HEIGHT-36". MESH CAN BE EITHER INDUSTRIAL POLYPROPOLENE OR STEEL MESH W/ MAXIMUM 6" OPENING. USE MINIMUM 14 GA. WIRE.

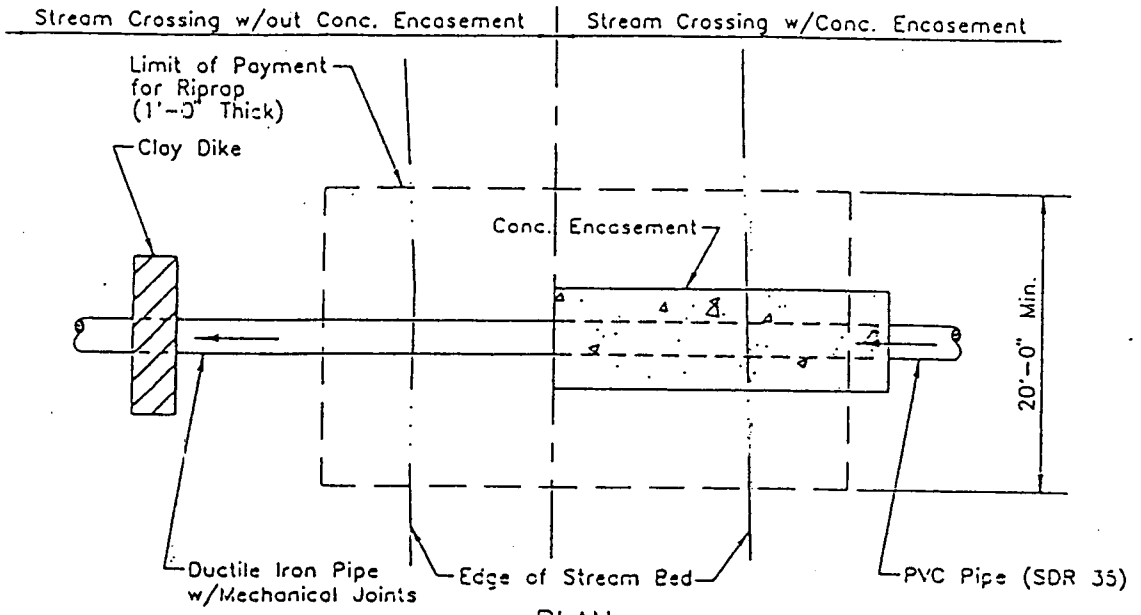
MAXIMUM SLOPE LENGTHS

Slope - Percent	Maximum Slope Length (ft) Above Fences	
	Type 1 Fence	Type 2 Fence
2 (or less)	250	500
5	100	250
10	50	150
15	35	100
20	25	70
25	20	55
30	15	45
35	15	40
40	15	35
45	10	30
50	10	25

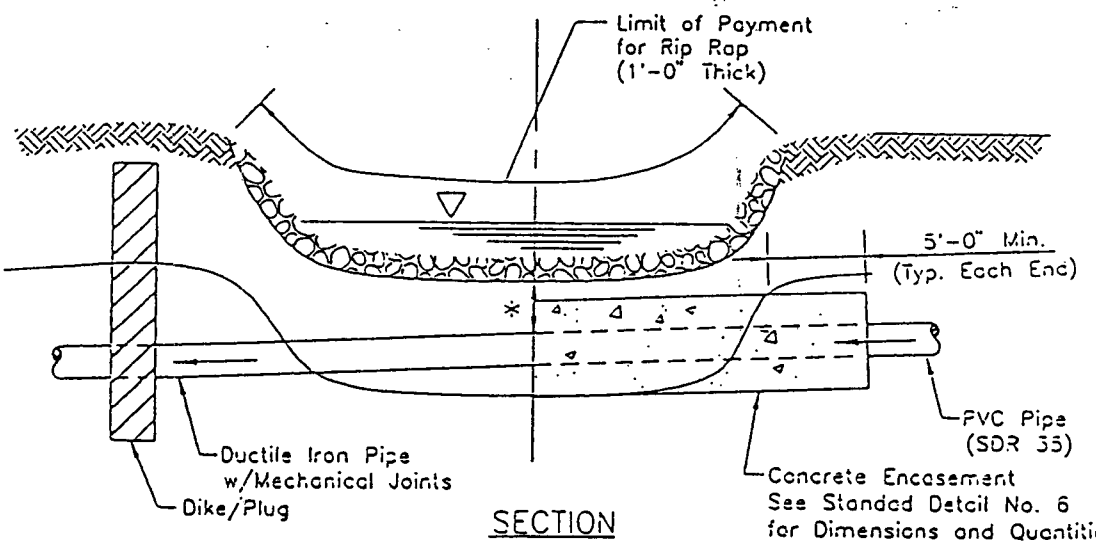
ON-LOT SEDIMENT CONTROL PLAN

NOT TO SCALE

GENERAL PERMIT: B.D.W.M. GP-5 UTILITY LINE STREAM CROSSING
DWG: NO. 1 UNDER STREAM



PLAN



SECTION

NOTES:

1. The use of Concrete Encasement or Ductile Iron Pipe will be req'd. to a minimum of 5' outside of stream bed as determined by Engeneer.
2. Unless Specified on the Plans the use of either Concrete Encasement or Ductile Iron Pipe will be the Contractors option.

* Provide minimum 3 feet of cover to sanitary pipe regardless of use of Concrete Encasement or Ductile Iron Pipe.

STANDARD DETAIL		
STREAM CROSSING DETAIL		
ISSUED: 9/1/94	FILE NO.: SC029	SCALE: NOT TO SCALE
DRAWN BY: PDS	CHECKED BY: PED	DWG. NO. 16

OWNER Wallaceton-Boggs Mun. Auth.
NAME OF STREAM Laurel Run, etc Wallaceton Boro.
MUNICIPALITY Boggs Township
COUNTY Clearfield

WALLACETON – BOGGS SANITARY SEWER CONSTRUCTION PROJECT
DECEMBER 1999

TABLE A – STREAM CROSSINGS

Crossing No.	Stream Name	Sheet No.	Length of Crossing L.F.	Description
1	Laurel Run	5	30	90' west of LR 17122 and 190' north of Church Hill Road. 8" PVC gravity sewer between MH A-8 and MH A-9
2	Unnamed Tributary to Laurel Run	5	15	480' east of LR 17122 and 60' south of Boggs Twp. Bldg. 8" PVC gravity sewer between MH A-4 and MH A-5
3	Unnamed small stream	14	20	200 ' west of SR 0322 and 210' east of Arc Road (T-676) 8" PVC gravity sewer between MH A-37 and MH A-38
4	Unnamed small stream	16	35	870' south of Reed Street and 200' east of SR 2029 8" PVC gravity sewer between MH A-46 and MH A-47,
5	Unnamed small stream	16	35	600' south of Reed Street and 260' east of SR 2029 8" PVC gravity sewer between MH A-47 and MH D-1

WALLACETON – BOGGS SANITARY SEWER CONSTRUCTION PROJECT
DECEMBER 1999

TABLE B – WETLAND CROSSINGS

Crossing No.	Wetland Designation	Sheet No.	Length of Crossing L.F.	Description
1	W	4	250	170' NE of Company Road 8" PVC gravity sewer between MH A-2 and MH A-3
2	V	4	30	580' NE of Company Road 8" PVC gravity sewer between MH A-1 and MH A-2
3	D	12	90	65' SW of SR 0322 and 260' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-32 and MH A-33
4	D	12	15	65' SW of SR 0322 and 360' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-32 and MH A-33
5	D	12	20	50' SW of SR 0322 and 400' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-31 and MH A-32
6	B	13	10	160' SW of SR 0322 and 700' NW of T-676 8" PVC gravity sewer between MH A-35 and MH A-36
7	H	15	100	215' East of SR 2029 8" PVC gravity sewer between MH A-43 and MH A-45
8	G	15	20	170' East of SR 2029 8" PVC gravity sewer between MH A-45 and MH A-46
9	F	15	25	170' East of SR 2029 8" PVC gravity sewer between MH A-45 and MH A-46
10	H	21	130	165' East of SR 2029 8" PVC gravity sewer between MH A-44 and MH B-1
11	P	28	20	40' SE of Reed Street 8" PVC gravity sewer between MH S-1 and MH S-2
12	Q	28	95	80' NW of Reed Street 8" PVC gravity sewer between MH S-3 and MH S-4
13	U	28	25	570' NW of Reed Street 8" PVC gravity sewer between MH S-3 and MH S-4
14	S/T	29	420	840' NW of Reed Street 8" PVC gravity sewer between MH S-5 and MH S-7
15	R	29	75	1300' NW of Reed Street 8" PVC gravity sewer between MH S-6 and MH S-8
16	V	38	125	590' NE of Company Road 8" PVC gravity sewer between MH AC-1 and MH A-1

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11422

CONTINENTAL CONSTRUCTION, INC. 01-1265-CD

VS.

WALLACETON-BOGGS MUNICIPAL AUTHORITY

COMPLAINT AND EXHIBIT A TO COMPLAINT

SHERIFF RETURNS

NOW AUGUST 28, 2001 AT 10:40 AM DST SERVED THE WITHIN COMPLAINT IN CIVIL ACTION/EXHIBIT A TO COMPLAINT ON WALLACETON-BOGGS MUNICIPAL AUTHORITY, DEFENDANT AT EMPLOYMENT, BOGGS TOWNSHIP BLDG., WEST DECATUR, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO GARY STRAW, SUP., PIC, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN CIVIL ACTION/EXHIBIT A TO COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
25.49	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

10th Day Of Sept 2001

So Answers,

by Marilyn Hamm

Chester A. Hawkins

Sheriff

FILED

SEP 10 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.,
Plaintiff,

v.

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,
Defendant.

No. 01-1265-CD

Type of Pleading:

Answer to Complaint
and Counterclaim

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED
OCT 0 8 2001
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUANTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant.	*	

NOTICE TO PLEAD

TO THE PLAINTIFF:

You are hereby notified to file a written response to the enclosed Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.

James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUANTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-12165-CD
WALLACETON-BOGGS MUNICIPAL AUTHCRITY, Defendant.	*	

ANSWER TO COMPLAINT AND COUNTERCLAIM

NOW COMES the Defendant, Wallaceton-Boggs Municipal Authority, and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. Admitted.

2. Admitted.

3. Admitted.

4. Paragraph 4 is admitted in so far as it alleges that Authority employed Sweetland Engineering & Associates, Inc. It is denied, however, that said employment occurred prior to December, 1999 but to the contrary said employment occurred on or about November 12, 1998. It is further denied that Sweetland was employed to design a specific number of lineal feet of pipe line but to the contrary its commission was to design a sewage collection and treatment system sufficient to service the residents of Wallaceton Borough and a portion of Boggs Township.

5. Denied and on the contrary it is alleged that bids for the project were advertised on March 8, 2000 and that

Contract Documents were supplied for inspection on or about March 22, 2000.

6. Admitted.

7. Admitted in so far as it alleges that Plaintiff submitted a bid proposal to construct the project. The remainder of said allegation is denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

8. Denied as stated. It is admitted, however, that Plaintiff was the lowest bidder.

9. Admitted.

10. Admitted in so far as it states that the Authority and Engineer conducted a pre-construction meeting with CCI. It is denied, however, that CCI immediately commenced work but to the contrary said work was not commenced until June 21, 2000.

11. Admitted in so far as it alleges that a multitude of disputes arose between CCI, the Authority and the Engineer. The remainder of said allegation is denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

12. Admitted.

COUNT 1: BREACH OF CONTRACT

13. Defendant incorporates its answers to Paragraphs 1 through 12 of Plaintiff's Complaint by reference and makes them a part hereof.

14. Admitted in so far as it alleges that Plaintiff submitted Shop Drawings to the Engineer for approval of the specific dimensions of the proposed manholes and to approve the supplier, McGill Septic Tank Company. In further answer thereto it is alleged that said Plans were also submitted for the purpose of reviewing manufacturing criteria.

15. Denied and on the contrary it is alleged that the Engineer provided conditional approval of the manhole supplier by letter dated June 14, 2000. A copy of said letter is attached hereto as Exhibit "A".

16. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

17. Admitted in so far as it states that the Engineer notified Plaintiff that it was withdrawing the conditional approval. It is denied, however, that the Engineer changed the interpretation of the Contract Specifications and to the contrary it is alleged that the Contract Specifications required that manholes to be used in PennDOT right-of-way be approved by PennDOT as required by the Contract Specifications Section 01010(1.5)(B)

and (C) and Section 02730(1.03). In further answer thereto it is alleged that approximately two weeks following Plaintiff's representation that the manholes provided by its proposed supplier was approved by PennDOT, PennDOT informed Engineer that the manholes proposed by Plaintiff were not approved by PennDOT.

18. Admitted in so far as it states that Plaintiff submitted new drawings from a different manhole supplier and that Plaintiff requested the Authority to issue a Change Order. It is denied, however, that there was a new interpretation of the Contract Specifications and in further answer thereto Defendant incorporates its answer to Paragraph 17 of Plaintiff's Complaint by reference and makes it a part hereof.

19. Admitted.

20. Denied in so far as it alleged that the Engineer changed its interpretation of the Specifications and in further answer thereto Defendant incorporates its answer to Paragraph 17 of Plaintiff's Complaint by reference and makes it a part hereof. It is admitted that Plaintiff requested a Change Order.

21. Admitted as stated but in further answer thereto it is alleged that the Engineer's decision to refuse Plaintiff's Change Order request was justified because of contractor's misinterpretation of the Contract Documents and contractor's misrepresentation that the manholes manufactured by McGill Septic Tank Company were PennDOT approved. In further answer thereto it

is alleged that contractor failed to substantiate its request for Change Order in terms of increased costs or the necessity for an extension of time.

22. Denied for the reasons set forth in answers to Paragraphs 17, 18 and 21 of Plaintiff's Complaint which answers are incorporated herein by reference and made a part hereof.

23. Denied for the reasons set forth in answers to Paragraphs 17, 18 and 21 of Plaintiff's Complaint which answers are incorporated herein by reference and made a part hereof.

24. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant respectfully requests that Count I of Plaintiff's Complaint be dismissed.

COUNT II: BREACH OF CONTRACT

25. Defendant incorporates its answers to Paragraphs 1 through 24 of Plaintiff's Complaint by reference and makes them a part hereof.

26. Admitted as stated but in further answer thereto it is alleged that a Plan was approved on March 22, 2000 as appears from letter to the Authority dated March 22, 2000. A copy of said letter is attached hereto as Exhibit "B".

27. Admitted.

28. Admitted.

29. Denied and on the contrary it is alleged that filter fabric fence was detailed on Sheet ESCD-50. It is admitted that the Bid Form had no separate bid item for filter fabric fence and in further answer thereto filter fabric fence was listed as an incidental item to be included in contractor's unit price for bid items 1, 2, 3, 4., 5, 7, and 10.

30. Admitted as stated but in further answer thereto it is alleged that the use of filter fabric fence was required by Section 01025 of the Contract.

31. Admitted.

32. Admitted.

33. Admitted.

34. Denied. After reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment. In further answer thereto it is alleged that under Section 01025 of the Contract Documents mulching was incidental to certain bid items.

35. Denied and on the contrary it is alleged that the Authority was required to amend its Plan because of contractor's failure to implement E&S Controls as required by the Contract.

36. Admitted.

37. Denied and on the contrary it is alleged that the Amended Plan submitted by the Engineer did not cause significant

changes in the contract with the exception of the amount of silt fence required.

38. Denied and on the contrary it is alleged that the Authority issued a Change Order compensating contractor for additional work required because of the Plan amendment.

39. Admitted.

40. Admitted.

41. Denied in so far as it alleged that the amendment to the Authority's E&S Control Plan did not alter the scope of the contract. It is admitted that said amendment required additional filter fabric fence for which contractor was reimbursed by Change Order.

42. Denied and on the contrary it is alleged that Plaintiff was fully compensated by Change Order.

43. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count II of Plaintiff's Complaint be dismissed.

COUNT III: BREACH OF CONTRACT

44. Defendant incorporates its answers to Paragraphs 1 through 43 of Plaintiff's Complaint by reference and makes them a part hereof.

45. Admitted.

46. Denied and on the contrary it is alleged that the Authority obtained a Permit which was approved by DEP on or about March 22, 2000. A copy of said approval is attached hereto as Exhibit "B".

47. Admitted.

48. Denied and on the contrary it is alleged that DEP did not revoke the Authority's permit but to the contrary required it to be revised.

49. Denied and on the contrary it is alleged that the Change Order requested by Plaintiff for a contract extension of 92 days was in no manner caused by the amendment to the Authority's E&S Control Plan. In further answer thereto it is alleged that Plaintiff had ample work in other areas of the Project which justified a remobilization time extension which was granted by the Authority. Finally, it is denied that the sequence and flow of Plaintiff's work was not impaired so as to delay completion of the project.

50. Denied and on the contrary it is alleged that the Authority claimed a one-day remobilization extension.

51. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

52. Denied and on the contrary Plaintiff was provided with a reasonable extension of its contract time.

53. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count III of Plaintiff's Complaint be dismissed.

COUNT IV: BREACH OF CONTRACT

54. Defendant incorporates its answers to Paragraphs 1 through 53 of Plaintiff's Complaint by reference and makes them a part hereof.

55. Denied and in answer thereto it is alleged that the Contract and its interpretation speaks for itself.

56. Admitted but in further answer thereto Defendant incorporates Section 00200, Article 4 and Section 01010(1.14) of the Contract Documents.

57. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

58. Denied in so far as it alleges that the Plans were inaccurate and grossly misrepresented the character of the work, physical ccnditions, subsurface conditions and location of underground facilities. In further answer thereto Defendant incorporates Section 00200, Article 4, 0002225(1.07) and Section 01025 of the Contract.

59. Denied and in answer thereto Defendant incorporates Section 00200, Article 4, 0002225(1.07) and Section 01025 of the Contract.

60. Denied and in answer thereto Defendant incorporates Section 00200, Article 4, 0002225(1.07) and Section 01025 of the Contract.

61. Denied and in answer thereto Defendant incorporates Section 00200 Article 4, 01010(1.14)(A), 01010(1.14(B), 01010(1.14)(F), Addendum #1, Contract 2000-01, Item 4B and Section 010125.

62. Denied in so far as it alleges that the conditions and locations were not accurately depicted and that Plaintiff was significantly delayed in the progress of its work. In further answer thereto, it is denied that Plaintiff was required to employ extraordinary measures and that any delay was caused by Plaintiff's failure to deploy a full crew to diligently pursue the Project.

63. Denied in so far as it states that Plaintiff encountered changes and additional work resulting from defects in the Plans. In further answer thereto it is alleged that to the extent that Plaintiff did incur additional work, Plaintiff was reasonably compensated.

64. Admitted as stated but in further answer thereto Defendant incorporates the provisions of the Contract previously cited in response to Plaintiff's allegation.

65. Denied and on the contrary it is alleged that the Authority has at all times fairly and reasonably compensated Plaintiff for additional work determined to be beyond the scope of the Contract.

66. Purports to be a statement of the law to which no answer is required.

67. Admitted but in further answer thereto Defendant incorporates Section 01010(1.4)(B), (C) and (F) by reference and makes them a part hereof.

68. Admitted but in further answer thereto Defendant incorporates its answer to Paragraph 67 of Plaintiff's Complaint by reference and makes it a part hereof.

69. Admitted but in further answer thereto Defendant incorporates its answer to Paragraph 67 of Plaintiff's Complaint by reference and makes it a part hereof.

70. Admitted but in further answer thereto Defendant incorporates its answer to Paragraph 67 of Plaintiff's Complaint by reference and makes it a part hereof.

71. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Plaintiff's Count IV be dismissed.

COUNT V: BREACH OF CONTRACT

72. Defendant incorporates its answers to Paragraphs 1 through 71 of Plaintiff's Complaint by reference and makes them a part hereof.

73. Denied and on the contrary it is alleged that the Contract Documents and their interpretation speak for themselves.

74. Denied and in answer thereto Defendant incorporates Section 01010(1.6)(A) and (B) of the Contract Drawings and Specifications.

75. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment. In further answer thereto it is denied that the Authority or Engineer made any representations to Plaintiff.

76. Denied in so far as it alleges that the Plans were false, misleading, inaccurate and grossly misrepresented the character of the work in so far as said Plans related to physical conditions, subsurface conditions and location of underground facilities. And in further answer thereto Defendant incorporates

Section 001010(1.14)(B) of the Contract Documents and Specifications.

77. Denied and on the contrary it is alleged that any delay in the progress of the work or extraordinary measures taken by contractor was the direct result of contractor's under-manning of the Project and by delaying the onset of construction activities for 34 days while completing other projects.

78. Denied is so far as it implies that Plaintiff encountered differing conditions and in further answer thereto it is alleged that Plaintiff was fairly and reasonably compensated for any work that exceeded the scope of the Project.

79. Admitted.

80. Denied and on the contrary it is alleged that the Authority fairly and reasonably compensated contractor for work performed beyond the scope of the Contract and further adjusted the time for performance to the extent that an extension was justified.

81. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Plaintiff's Count V be dismissed.

COUNT VI: BREACH OF CONTRACT

82. Defendant incorporates its answers to Paragraphs 1 through 81 of Plaintiff's Complaint by reference and makes them a part hereof.

83. Denied and on the contrary it is alleged that Sheet 18 of 57 of the Contract Documents accurately depicts the location of an existing storm sewer on Clearfield Street between Manhole A51 and A53.

84. Denied and on the contrary it is alleged that there was no error in the Plans but that dispute arose over the location of the waterline, sanitary sewer line and the storm sewer. It is admitted, however, that 450 feet of storm sewer and catch basin had to be relocated.

85. Admitted but in further answer thereto it is alleged that Plaintiff subsequently by letter dated January 19, 2001 agreed to accept $18.50 per lineal foot to relocated the sewer line and to accept $120.00 per catch basin. Finally, Plaintiff requested a two-day extension of time for work which was granted.

86. Denied and in answer thereto Defendant incorporates its answer to Paragraph 85 by reference and makes it a part hereof.

87. Denied in so far as it alleges that the interference by PennDOT changed the sequence and scope of the work

and in further answer thereto it is alleged that Plaintiff was fairly and reasonably compensated in both contract time and payment for the additional work.

88. Denied in so far as it alleges that PennDOT initiated changes in the scope of the work and to the contrary it is alleged that said changes were the result of a dispute over the location of waterlines and sanitary sewer lines. In further answer thereto it is alleged that Plaintiff accepted the Change Order approved by the Authority which fairly and reasonably compensated Plaintiff for any additional work and for the additional time required to perform said work.

89. Denied and in answer thereto Defendant incorporates its answer to Paragraphs 87 and 88 of Plaintiff's Complaint by reference and makes them a part hereof.

90. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Plaintiff's Count VI be dismissed.

COUNT VII: BREACH OF CONTRACT

91. Defendant incorporates its answers to Paragraphs 1 through 90 of Plaintiff's Complaint by reference and makes it a part hereof.

92. Admitted and in further answer thereto Defendant incorporates Memorandum attached hereto as Exhibit "C".

93. Admitted.

94. Admitted.

95. Admitted but in further answer thereto it is alleged that by letters dated October 31, 2000, November 1, 2000 and November 16, 2000, the Authority responded to CCI's request for Change Order and provided clarification as to how CCI would be paid for additional work. Copies of said letter are attached hereto collectively as Exhibit "D".

96. Denied and on the contrary it is alleged that Plaintiff was reasonably and properly compensated for any additional work with unit price adjustment or Change Orders.

97. Denied and in answer thereto Defendant incorporates its answer to Paragraph 96 of Plaintiff's Complaint by reference and makes it a part hereof.

98. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count VII of Plaintiff's Complaint be dismissed.

COUNT VIII: BREACH OF CONTRACT

99. Defendant incorporates its answer to Paragraphs 1 through 98 of Plaintiff's Complaint by reference and makes them a part hereof.

100. Denied and on the contrary it is alleged that the section cited by Plaintiff in said allegation speaks for itself.

101. Denied and on the contrary it is alleged that the Authority never authorized another contractor to remove significant quantities of material from CCI's stockpile of fill. In further answer thereto it is alleged that Plaintiff failed to obtain approval of its fill from the Project Engineer.

102. Admitted.

103. Admitted and in further answer thereto it is alleged that Plaintiff never maintained 500 cy of approved suitable backfill as required by Section 02225(2.3)(A) of the Contract Documents and Specifications and therefore no change order was required.

104. Denied and on the contrary it is alleged that Plaintiff never supplied additional stockpile material to Authority and its claim to the contrary is fraudulent.

105. Denied and in answer thereto Defendant incorporates its answer to Paragraph 104 of Plaintiff's Complaint by reference and makes it a part hereof.

106. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count VIII of Plaintiff's Complaint be dismissed.

COUNT IX: BREACH OF CONTRACT

107. Defendant incorporates it answers to Paragraphs 1 through 106 of Plaintiff's Complaint by reference and makes them a part hereof.

108. Admitted in so far as it alleges that Defendant directed Plaintiff to perform remedial work on certain roadways. It is specifically denied that said remedial work was the result of defective design or weather conditions and to the contrary was the direct result of improper construction and maintenance on the part of Plaintiff. In further answer thereto Defendant notified Plaintiff of the road defects by letter dated February 13, 2001. A copy of said letter is attached hereto as Exhibit "E".

109. Denied and on the contrary it is alleged that Plaintiff never requested additional compensation for remedial work on the roadways and in further answer thereto it alleged that said work was within the scope of Plaintiff's Contract in accordance with Section 01010(1.09)(B) and (E) of the Contract Plans and Specifications.

110. Admitted. In further answer thereto Defendant incorporates its answers to Paragraphs 108 and 109 of Plaintiff's Complaint by reference and makes them a part hereof.

111. Denied and on the contrary it is alleged that said remedial work was within the scope of Plaintiff's Contract and in further answer thereto Defendant incorporates its answers to Paragraphs 108 and 109 of Plaintiff's Complaint by reference and makes them a part hereof.

112. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count IX of Plaintiff's Complaint be dismissed.

COUNT X: BREACH OF CONTRACT

113. Defendant incorporates its answers to Paragraphs 1 through 112 of Plaintiff's Complaint by reference and makes them a part hereof.

114. Denied and on the contrary it is alleged that at the pre-bid conference, Defendant notified bidders that one dump site would be available within the site to dispose of excess material.

115. Denied. After reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

116. Denied and on the contrary it is alleged that Defendant identified one dump site at the pre-bid conference on the property of Darrell Dufour. In further answer thereto it is alleged that Defendant did inform Plaintiff that a second potential dump site was available within the Borough of Wallaceton known as the Shimmel property but that Plaintiff would have to obtain permission to dump at that site.

117. Denied and in further answer thereto Defendant incorporates its answer to Paragraph 116 hereof which is incorporated herein by reference.

118. Admitted in so far as it states that Plaintiff demanded a Change Order which was rejected. In further answer thereto it is alleged that said refusal was premised upon Defendant's contention that Plaintiff was aware that only one dump site had been established on the Darrell Dufour property that any surplus materials not placed at said dump site would be disposed of at the expense of the contractor.

119. Denied and in answer thereto Defendant incorporates its answer to Paragraphs 116, 117 and 118 of Plaintiff's Complaint by reference and makes them a part hereof.

120. Denied and in answer thereto Defendant incorporates its answers to Paragraphs 116, 117 and 118 of Plaintiff's Complaint by reference and makes them a part hereof.

121. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count X of Plaintiff's Complaint be dismissed.

COUNT XI: BREACH OF CONTRACT

122. Defendant incorporates its answers to Paragraphs 1 through 121 of Plaintiff's Complaint by reference and makes them a part hereof.

123. Denied and on the contrary it is alleged that said estimates were reasonably accurate. In further answer thereto Defendant incorporates Section 11.03(A) of the General Contract Conditions by reference and makes it a part hereof.

124. Denied and on the contrary it is alleged that there were changes to the estimated quantities for each of the items identified by Plaintiff.

125. Admitted but in further answer thereto it is alleged that there was also an agreement that where a bid item varied by more than 15% a potential decrease in unit price might be in order due to volume cost savings.

126. Denied in so far as it implies significant quantity differences. It is admitted, however, that Plaintiff notified Defendant of a request for an adjustment to the as-bid unit price and a reasonable extension of the contract time. In further answer thereto it is alleged that Defendant requested

Plaintiff to justify the alleged cost increase as required by Section 10.05(A) of the General Contract Conditions. Finally, it is alleged that Plaintiff failed to comply with Defendant's request within sixty (60) days.

127. Admitted but in further answer thereto Defendant incorporates its answer to Paragraph 126 of Plaintiff's Complaint by reference and makes it a part hereof.

128. Admitted except to the extent that it implies that there were material and significant changes in estimated quantities. In further answer thereto Defendant incorporates its answer to Paragraph 126 of Plaintiff's Complaint by reference and makes it a part hereof.

129. Denied and in answer thereto Defendant incorporates its answer to Paragraph 126 of Plaintiff's Complaint by reference and makes it a part hereof.

130. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XI of Plaintiff's Complaint be dismissed.

COUNT XII: BREACH OF CONTRACT

131. Defendant incorporates its answer to Paragraphs 1 through 130 of Plaintiff's Complaint by reference and makes them a part hereof.

132. Denied and in answer thereto it is alleged that the Contract Documents and their interpretation speak for themselves. In further answer thereto it is alleged that Plaintiff's as-planned schedule did not establish a critical path and/or indicate a sequencing of areas where the contractor would work.

133. Admitted but in further answer thereto it is alleged that the Defendant at no time forced or directed Plaintiff to proceed out of order to have a normal construction sequence. And to the contrary, Plaintiff often chose to remobilize its crews to an area where it believed there might be a conflict or dispute leaving other areas incomplete in an attempt to validate a claim and seek a Change Order.

134. Denied and in answer thereto Defendant incorporates its answer to Paragraph 133 of Plaintiff's Complaint by reference and makes it a part hereof. In further answer the particulars alleged in Paragraphs 134(a) through (w) constitute restatements of complaints previously addressed in prior counts of Plaintiff's Complaint but to the extent that an answer may be necessary the particulars are as follows:

a. Defendant incorporates its answers to Paragraphs 55, 56, 57, 58 and 60 of Plaintiff's Complaint by reference and makes them a part hereof.

b. Defendant incorporates its answers to Paragraphs 55, 56, 57, 58 and 60 of Plaintiff's Complaint by reference and makes them a part hereof.

c. Defendant incorporates its answers to Paragraphs 55, 56, 57, 58 and 60 of Plaintiff's Complaint by reference and makes them a part hereof.

d. Defendant incorporates its answers to Paragraphs 55, 56, 57, 58 and 60 of Plaintiff's Complaint by reference and makes them a part hereof.

e. All highway occupancy permits were obtained prior to providing Plaintiff with a Notice to Proceed as were all easements and construction right-of-ways.

f. Denied and on the contrary it is alleged Defendant responded to all of Plaintiff's correspondence and verbal communications in a timely fashion as required by the Contract Documents. To the extent that Plaintiff was disenchanted with a response, it often either ignored the response or attempted to validate a claim by alleging that no response had been made.

g. Defendant at all times promptly responded to Plaintiff's request for Change Orders requesting

payment for extra work and/or extensions of contract time.

h. Defendant obtained all permits before Notice to Proceed was issued.

i. Defendant promptly revised permits upon request of the permitting authority and further alleges that Plaintiff at no time was required to halt construction.

j. Defendant incorporates its answers to Paragraphs 14 through 24 of the First Count of Plaintiff's Complaint by reference and makes them a part hereof.

k. Defendant responded promptly to Plaintiff's inquiry pertaining relocation of segments of sewer line. In further answer thereto it is alleged that Plaintiff was unhappy with the Engineer's response and consequently fabricated delays.

l. Plaintiff failed to provide Defendant with a list of subcontractors with submission of their bid.

m. PennDOT did not require additional work with regard to the storm sewer. The storm sewer was relocated in the same trench as the sewer line due to

a conflict between utilities. Plaintiff was compensated appropriately for its extra work.

n. Defendant incorporates its response to Count IV of Plaintiff's Complaint by reference and makes it a part hereof.

o. Defendant incorporates its answers to the Paragraphs contained in Count II of Plaintiff's Complaint by reference and makes them a part hereof.

p. Defendant incorporates its answers to Count IV of Plaintiff's Complaint by reference and makes them a part hereof.

q. Defendant incorporates its answers to Count IV of Plaintiff's Complaint by reference and makes them a part hereof.

r. Contract Documents Section 11310, Part 2 (2.01) listed specifications and identification of approved manufacturers of grinder pumps. On July 27, 2000 Plaintiff submitted a pump manufactured by an unapproved manufacturer. This pump was rejected because it failed to meet Project requirements. On September 18, 2000, Plaintiff submitted a pump manufactured by F.E. Myers, an approved manufacturer, which pump was approved on September 22, 2000.

s. Defendant did not request Plaintiff to install wye connections and to the contrary instructed Plaintiff not to perform said work by letter dated November 16, 2000. A copy of said letter is attached hereto as Exhibit "F".

t. Defendant incorporates its answers to Count X of Plaintiff's Complaint by reference and makes them a part hereof.

u. Defendant refused to grant winter shutdown because the Project had not been substantially completed by December 19, 2000 as required by the Contract.

v. The Engineer requested that all communications with Plaintiff be done in writing by letter dated October 4, 2000 which letter was given in response to Plaintiff's letter of September 29, 2000. A copy of both letters are attached hereto collectively as Exhibit "G".

w. Defendant at all times cooperated with Plaintiff to assure timely and orderly performance of the work.

135. Denied and in answer thereto Defendant incorporates its answers to Paragraphs 134(a) through (w) of Plaintiff's Complaint by reference and makes them a part hereof.

In further answer thereto it is alleged that Plaintiff never had an as-planned sequential work schedule.

136. Admitted but in further answer thereto it is alleged that the Plaintiff was the cause of the delays and disruptions on the Project.

137. Denied and on the contrary it is alleged that the Authority has adjusted time and prices for all work performed by Plaintiff beyond the scope of the Contract. In further answer thereto it is alleged that all delays and disruptions were caused by the Plaintiff.

138. Denied and on the contrary it is alleged that to the extent that there were delays and disruptions in the Project that all said delays and disruptions were the direct result of the obstreperous conduct on the part of Plaintiff which is solely responsible for any loss of productivity or other expenses incidental to construction delays.

139. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XII of Plaintiff's Complaint be dismissed.

COUNT XIII: BREACH OF CONTRACT

140. Defendant incorporates its answers to Paragraphs 1 through 139 of Plaintiff's Complaint by reference and makes them a part hereof.

141. Denied and on the contrary it is alleged that all relevant information in the possession of Defendant was provided to all bidders including the Plaintiff.

142. Denied and on the contrary it is alleged that the intent and interpretation of the Contract Documents speak for themselves. And in further answer thereto it is specifically denied that Defendant negligently, recklessly, knowingly or otherwise concealed material facts concerning the work to the bidders but to the contrary disclosed all relevant information in its possession and for which it was obligated to disclose.

143. Denied in so far as it states that the Authority withheld its superior knowledge and to the contrary it is alleged that the Authority disclosed all materials within its knowledge and more specifically answers as follows:

a. The status of easements and right-of-ways was nct incomplete so as to impede performance of the work.

b. Defendant had no independent knowledge of the location or presence of concrete under State

Route 2024 but did provide a Change Order to compensate Plaintiff to saw-cut the roadway.

c. Defendant had no independent knowledge of the location or presence of concrete under State Route 2024 but did provide a Change Order to compensate Plaintiff to saw-cut the roadway.

d. Defendant incorporates its answers to Count IV of Plaintiff's Complaint by reference and makes them a part hereof.

e. Defendant incorporates its answers to Count IV of Plaintiff's Complaint by reference and makes them a part hereof.

f. Defendant incorporates its answers to Count III of Plaintiff's Complaint by reference and makes them a part hereof.

g. Defendant incorporates its answers to Count III of Plaintiff's Complaint by reference and makes them a part hereof.

h. Defendant incorporates its answers to Count III of Plaintiff's Complaint by reference and makes them a part hereof.

i. Defendant incorporates its answers to Count II of Plaintiff's Complaint by reference and makes them a part hereof.

j. Defendant designated one dump site which was provided. Any other dump site was the responsibility of contractor.

k. Defendant incorporates its answers to Count VI of Plaintiff's Complaint by reference and makes them a part hereof.

l. Defendant incorporates its answers to Count IV of Plaintiff's Complaint by reference and makes them a part hereof.

m. Defendant incorporates its answers to Count I of Plaintiff's Complaint by reference and makes them a part hereof.

144. Denied and on the contrary it is alleged that the Authority did not fail to disclose material facts within its knowledge.

145. Denied and on the contrary it is alleged that Defendant did not misrepresent any material facts.

146. Denied and on the contrary it is alleged that Defendant did not misrepresent any material facts associated with the work.

147. Denied and on the contrary it is alleged that Defendant did not misrepresent any material facts nor did the Authority have superior knowledge which it failed to share with Plaintiff. In further answer thereto it is alleged that any

damages alleged to have been incurred by Plaintiff were the direct result of its failure to diligently pursue construction of the project.

WHEREFORE, Defendant requests that Count XIII of Plaintiff's Complaint be dismissed.

COUNT XIV: BREACH OF CONTRACT

148. Defendant incorporates its answers to Paragraphs 1 through 147 of Plaintiff's Complaint by reference and makes them a part hereof.

149. Specifically denied and on the contrary it is alleged that the Contract Documents were not defective nor were the conditions encountered by Plaintiff materially different from the actual character or scope of Plaintiff's work. In further answer thereto it is alleged that the Contract Documents and interpretation speak for themselves.

150. Denied and on the contrary it is alleged that the as-built scope of the work is consistent with the scope of the work contemplated by the Contract.

151. Denied and on the contrary it is alleged that the as-built scope of the work was consistent with the scope of work contemplated by the Contract and in further answer thereto it is alleged that Plaintiff was properly compensated through Change

Orders for all extra work not encompassed within the scope of the Contract.

WHEREFORE, Defendant requests that Count XIV of Plaintiff's Complaint be dismissed.

COUNT XV: QUANTUM MERUT

152. Defendant incorporates its answers to Paragraphs 1 through 151 of Plaintiff's Complaint by reference and makes them a part hereof.

153. Admitted.

154. Denied and on the contrary it is alleged that the reasonable value of Plaintiff's services was substantially less than the amounts paid under the Contract.

155. Denied and on the contrary it is alleged that Plaintiff has been paid in accordance with the terms and conditions of the parties' Contract.

WHEREFORE, Defendant requests that Count XV of Plaintiff's Complaint be dismissed.

COUNT XVI: BREACH OF CONTRACT

156. Defendant incorporates its answers to Paragraphs 1 through 155 of Plaintiff's Complaint by reference and makes them a part hereof.

157. Admitted.

158. Denied in so far as it states that Plaintiff encountered a multitude of delays, changes and extra work and to the contrary it is alleged that said extra work was minimal in respect to the scope of the Project. It is admitted however, that Plaintiff continuously and repeatedly requested the Authority for extensions of time.

159. Denied and on the contrary it is alleged that Defendant at all times reasonably refused to extend the contract time to the extent that said requests were unreasonable; otherwise extensions were granted consistent with the time required to perform work beyond the scope of the contract.

160. States a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff requests that Count XVI of Plaintiff's Complaint be dismissed.

COUNT XVII: BREACH OF CONTRACT

161. Defendant incorporates its answers to Paragraphs 1 through 160 of Plaintiff's Complaint by reference and makes them a part hereof.

162. Admitted.

163. Admitted in so far as it states that Plaintiff initiated a multitude of repeated and continuous requests to extend contract time. It is denied, however, that said requests

were reasonable and consequently were denied for the reasons set forth in Defendant's answers to the various allegations of Plaintiff's Complaint. In further answer thereto it is alleged that Plaintiff's failure to maintain a project schedule was the cause of Plaintiff's having to perform work during the winter months in that the project was well overdue for substantial completion.

164. Denied and on the contrary it is alleged that Plaintiff at no time adopted extraordinary methods to perform the work required to complete the Project and to the contrary Plaintiff utilized only one pipeline crew until or on or about September 5, 2000 at which time a second and third crew was added on or about October 16, 2000. In further answer thereto it is alleged that Plaintiff did not commence construction of the Project until July 24, 2000.

165. Denied and on the contrary it is alleged that while Plaintiff regularly applied for payments, request for payment was not always submitted in accordance with the Contract Documents.

166. Denied and on the contrary it is alleged that the Contract speaks for itself.

167. Admitted in so far as it states that the Authority has assessed Plaintiff with liquidated damages. In further answer thereto it is alleged that said damages have been

assessed in accordance with the Contract, the provisions of which speak for themselves. In further answer thereto it is denied that the Authority refused to provide Plaintiff with a reasonable extension of Contract Time and to the contrary it did extend Contract Time sufficient to permit performance of all extra work required by the Contract.

168. States a conclusion of law to which no answer is required.

169. Denied and on the contrary it is alleged that the Contract and its interpretation speak for themselves.

170. States a conclusion of law to which no answer is required.

COUNT XVIII: BREACH OF CONTRACT

171. Defendant incorporates its answers to Paragraphs 1 through 170 of Plaintiff's Complaint by reference and makes it a part hereof.

172. Admitted.

173. Admitted.

174. Denied and on the contrary the Project Engineer issued a preliminary list of items to be completed with cost estimates.

175. Denied and on the contrary it is alleged that the terms of the Contract speak for themselves. In further

answer thereto it is alleged that Article 5.2.1(B) specifically provides as follows:

> "Retainage shall be five percent (5%) of the total amount of the work completed after fifty percent (50%) of the Work has been completed provided, however, that the character and the progress of the Work has been satisfactory to the OWNER and/or the ENGINEER, on recommendation by the ENGINEER, and there is no specific cause for greater cause for withholding."

176. Denied and on the contrary it is alleged that the Contract speaks for itself.

177. Denied and on the contrary it is alleged that all items have not been completed.

178. Admitted but in further answer thereto it is alleged that Defendant has withheld amounts necessary to repair and/or replace defective work and to finish incomplete work.

179. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is specifically denied and on the contrary it is alleged that Article 5.2 of the Contract authorizes the Authority to withhold amounts greater than the specified retainage.

WHEREFORE, Defendant requests that Count XVIII of Plaintiff's Complaint be dismissed.

COUNT XIX: BREACH OF CONTRACT

180. Defendant incorporates its answers to Paragraphs 1 through 179 of Plaintiff's Complaint by reference and makes them a part hereof.

181. Denied and on the contrary it is alleged that Plaintiff has not completed the work and to the contrary has failed and/or refused to replace or repair defective work and resolve outstanding complaints of property owners including the disruption of property beyond the confines of the easements obtained from the property owners.

182. Denied and on the contrary it is alleged that Plaintiff's failure to complete the work in full has caused the delays and extended close out of the Project.

183. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XIX of Plaintiff's Complaint be dismissed.

COUNT XX: BREACH OF CONTRACT

184. Defendant incorporates its answers to Paragraphs 1 through 183 of Plaintiff's Complaint by reference and makes them a part hereof.

185. Denied and on the contrary it is alleged that during the course of performance not all of Plaintiff's

applications for payment were submitted in accordance with Article 5 of the Contract and Article 14 of the General Conditions. To the contrary Plaintiff on numerous occasions requested payment for work which was not completed and work which was defective. In further answer thereto it is alleged that Plaintiff failed to submit pay applications within the requisite time frame and finally that payment was made in accordance with the Contract Documents.

186. Denied and in answer thereto Defendant incorporates its answer to Paragraph 185 of Plaintiff's Complaint by reference and makes it a part hereof. Finally, it is denied that the work is completed or that Defendant has withheld excessive detention and to the contrary is withholding payment to Plaintiff in accordance with Article 5.2 and Article 14.02(D) and (B.5) of the Contract's General Conditions.

187. States a conclusion of law to which no answer is required.

WHEREFCRE, Defendant requests that Count XX of Plaintiff's Complaint be dismissed.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE

188. Defendant incorporates its answers to Paragraphs 1 through 187 of Plaintiff's Complaint by reference and makes them a part hereof.

189. Admitted.

190. States a conclusion of law to which no answer is required.

191. Sets forth a statutory provision to which no answer is required.

192. Denied and on the contrary it is alleged that the Defendant at all times made payment to the Plaintiff in accordance with the Contract Documents and in further answer thereto acted in good faith to the extent payments were withheld or delayed.

193. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XXI of Plaintiff's Complaint be dismissed.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE
(Improperly Numbered)

194. Defendant incorporates its answers to Paragraphs 1 through 193 of Plaintiff's Complaint by reference and makes them a part hereof.

195. Admitted.

196. Admitted.

197. States a conclusion of law to which no answer is required.

198. Denied in the following particulars:

a. Denied. At all times Defendant made payment to Plaintiff in accordance with the Contract and to the extent payments were delayed or withheld, the Defendant acted in good faith belief that it was entitled to do so under the terms of the Contract.

b. Denied and on the contrary Defendant has acted in good faith belief as to its right under Articles 5.2 and 14.02 of the Contract.

c. Denied and on the contrary it is alleged that Defendant at all times followed the recommendations of its Engineer.

d. Denied and on the contrary it is alleged that Defendant had no knowledge of the conditions identified by Plaintiff and in further answer thereto it is alleged that Plaintiff was obligated under the Contract to effect its own inspection of the property and further had the right to be compensated for any additional excavation necessary to ascertain the conditions about which it complains.

e. States a conclusion of law to which no answer is required. To the extent that an answer may be required, it is generally denied.

f. Denied and on the contrary it is alleged that the status of easements, right-of-ways and permits in no manner impacted the work to be performed by Plaintiff nor was Plaintiff at any time required to discontinue work.

g. Denied and on the contrary it is alleged that Defendant was required to provide one dump site.

h. Denied and on the contrary it is alleged that no work was required by PennDOT and in further answer thereto to the extent that extra work was required, Plaintiff was compensated.

i. Denied to the extent that said allegation implies that Plaintiff had an obligation to depict and locate underground utilities or that it had knowledge of the location of said utilities.

j. Denied in so far as it implies that Plaintiff had an obligation to provide a winter shutdown and to the contrary it is alleged that a winter shutdown was rendered impossible by Plaintiff's continued construction delays.

k. Denied that Defendant at any time discriminated against Plaintiff on the basis of sex.

199. States a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff requests that Count XXI of Plaintiff's Complaint be dismissed.

COUNT XXII: CIVIL RIGHTS ACTION

200. Defendant incorporates its answers to Paragraphs 1 through 199 of Plaintiff's Complaint by reference and makes them a part hereof.

201. No answer required.

202. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

203. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

204. Denied and on the contrary it is alleged that the Authority and its male agents at no time has a matter of policy or custom consistently, willfully or otherwise discriminated against Plaintiff based upon sex.

a. Denied and on the contrary it is alleged that HRI was granted a winter shutdown because that company had substantially completed its work. Conversely Plaintiff did not request a winter shutdown until February 16, 2001 and was not substantially completed. In further answer thereto HRI was held to

the same requirements with regard to the use of alternate materials as was Plaintiff. See Exhibit "H". In further answer thereto it is alleged that HRI provided Defendant with a list of subcontractors with its bid as required by the Contract Specifications. Conversely Plaintiff failed to seek approval of subcontractors under four months after Plaintiff was given Notice to Proceed. Finally, the Authority did not prohibit its Engineer from communicating orally with the Plaintiff and to the contrary it was the decision of the Engineer to discontinue oral communications with Plaintiff as appears from Exhibit "G"

b. Admitted but in further answer thereto it is alleged that the Engineer's decision to communicate with Plaintiff in writing was prompted by Plaintiff's ongoing propensity to engage in verbal misrepresentations which placed her credibility at issue with the Project Engineer.

c. Denied. This is a general no-specific allegation to which Defendant makes a general denial in that after reasonable investigation Defendant is aware of no comments made by its male agents indicating a general disrespect for women.

d. Denied and to the contrary it is alleged that the Authority after reasonable investigation is aware of no comments made by its male agents casting doubt on Plaintiff's ability to perform the work because Plaintiff was a female. It is admitted, however, that various agents of the Authority including females have expressed serious concern as to the quality and efficiency of the work performed by Plaintiff generally.

e. Denied and on the contrary it is alleged that neither the Authority nor its male agents have at any time attempted to intimidate and bully the female owner of the Plaintiff. To the contrary it is alleged that Plaintiff has consistently, willfully, customarily and purposefully threatened the Authority with her status as a WBE and specifically has threatened the Authority with a claim of discrimination in an effort to coerce additional money and time from the Authority.

f. Admitted as stated but in further answer thereto it is alleged that it is the custom of the Authority to address letters to all females as MS and did not reserve that title for Ms. Marzella. In further answer thereto it is alleged that while the letters directed to Ms. Marzella were signed by a male member of

the Authority, those letter were composed by the Authority's secretary who is female.

205. States a conclusion of law to which no answer is required.

206. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is generally denied.

207. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XXII of Plaintiff's Complaint be dismissed.

COUNTERCLAIM

NOW COMES the Plaintiff in the Counterclaim, Wallaceton-Boggs Municipal Authority and sets forth the following Counterclaim against the Defendant in the Counterclaim, Continental Construction, Inc.:

208. That the Plaintiff in the Counterclaim incorporates its answers to Paragraphs 1 through 207 of the Plaintiff's Complaint by reference and makes them a part hereof.

COUNT I

209. That bid proposals for the Wallaceton-Boggs Municipal Authority (Authority) Sanitary Sewer Project (Project) were opened on April 6, 2000.

210. That following inspection of the bids, it was determined that Continental Construction, Inc. (CCI) was the low bidder.

211. That the Authority awarded the Contract for construction of the Project to CCI and a copy of all Contract Documents was signed by the parties on or about June 21, 2000.

212. That both parties to this litigation are in possession of a complete copy of all Contract Documents.

213. That subsequent to the awarding of the bid, Mrs./Ms. Julie Marzella who is believed by the Authority to be a principal officer of CCI informed the Authority that she had underbid the Contract and demanded that the Authority disclose the amount of funding set aside for contingencies.

214. That the Authority issued a Notice to Proceed to CCI following which CCI failed to initiate construction activities for a period of 34 days following receipt of said Notice.

215. That at all times during the course of construction the officers, employees and agents of CCI adopted an adversarial posture toward the Authority, its employees and agents.

216. That during the course of construction, CCI failed to adopt a viable construction plan or to adhere to a construction timetable.

217. That during the course of the construction, CCI intentionally and willfully engaged in a course of conduct so as to cause construction delays and in the following particulars:

a. CCI represented to the Authority that manholes covers manufactured by McGill Sanitary were approved by PennDOT when in fact said manhole covers were not approved and therefore could not be installed within PennDOT right-of-ways without contraversing PennDOT regulations and Contract Specifications.

b. CCI's failure to adopt appropriate E&S Controls during the course of construction prompted DEP to demand revision to the Authority's erosion and sedimentation plan which was approved by DEP on March 22, 2000.

c. CCI requested a 92 day extension as a result of a DEP order to halt construction in the Simeling Run Area although there was adequate and ample work that could be performed upon other areas of the Project.

d. CCI made unreasonable and vexatious claims for unforeseen and differing site conditions

despite the fact that the plans, specifications and bid documents clearly required all bidders to inspect the site in advance and to fully investigate site conditions including the substrata.

e. In addition to failing to make a proper site inspection as required by the Contract Documents, Specifications and Bid Documents, CCI failed to inspect the right-of-way needs of its excavation for which activities it would have been entitled to be compensated for extra work under the Contract.

f. CCI demanded unreasonable compensation to relocate a storm water line in a trench which it had already excavated in order to install the sanitary sewer line and in addition requested an unreasonable extension of time on the Contract.

g. CCI requested unreasonable compensation and extension of work schedule to relocate manholes A51 and A53.

h. CCI requested unreasonable compensation and extension of work schedule to relocate manholes A21 through A28.

i. CCI presented Authority with a fraudulent claim for delivery of 2876.36 cubic yards of fill material which material was never delivered to the site.

j. CCI refused to comply with its obligations under the Contract Documents and Specifications to perform necessary road repairs.

k. CCI presented a claim for additional compensation alleging that the Authority was to provide two on-site dump sites when in fact it was made clear to all contractors including CCI that one dump site would be provided on the Darrell Dufour property.

l. CCI presented a claim to the Authority for installing additional wye's for $80 per unit which amount was unreasonably excessive and therefore rejected by the Authority which instructed CCI not to install the wyes and for which CCI is seeking compensation.

m. Mrs./Ms. Marzella repeatedly threatened the Authority with a Civil Rights Action alleging that CCI was a Woman-owned Business Enterprise (WBE).

n. Mrs./Ms. Marzella repeatedly made verbal misrepresentations to the Authority's Engineer to the extent that the Engineer by letter dated October 4, 2000 requested that all future communications between the Engineer and CCI be conducted in writing.

o. As a direct result of the obstreperous, vexatious, intentional and fraudulent conduct on the part of CCI, the Project was delayed to the extent that

substantial completion did not occur until April 18, 2001.

p. Final construction has not been completed on the Project and it remains uncompleted at the time of the filing of this Counterclaim.

WHEREFORE, Plaintiff in the Counterclaim claims delay damages from Defendant in the Counterclaim in excess of Twenty-Five Thousand ($25,000.00) Dollars as provided by the Contract.

COUNT II

218. That Plaintiff in the Counterclaim incorporates Paragraphs 1 through 217 hereof by reference and makes them a part hereof.

219. That as a result of the construction delays incurred by the obstreperous, vexatious, intentional and fraudulent conduct of the Defendant in the Counterclaim, Plaintiff in the Counterclaim has incurred hard costs for additional inspection fees in the amount of $122,102.17.

220. That as a result of the construction delays incurred by the obstreperous, vexatious, intentional and fraudulent conduct of the Defendant in the Counterclaim, Plaintiff in the Counterclaim has incurred additional interest costs in the amount of $7,310.40.

221. That as a result of the construction delays incurred by the obstreperous, vexatious, intentional and fraudulent conduct of the Defendant in the Counterclaim, Plaintiff in the Counterclaim has incurred clerical and rental costs in the amount of $7,1_0.00.

WHEREFORE, Plaintiff in the Counterclaim claims damages from Defendant in the Counterclaim in excess of Twenty-Five Thousand ($25,000.00) Dollars.

COUNT III

222. That the Plaintiff in the Counterclaim incorporates Paragraphs 1 through 221 hereof by reference and makes them a part hereof.

223. That CCI has failed to compete construction of the Project or to correct defective work.

224. That a list of defects and the cost of correct them to the extent available at the time of filing this Counterclaim is attached hereto as Exhibit "I".

WHEREFORE, Plaintiff in the Counterclaim claims damages against Defendant in the Counterclaim in excess of Twenty-Five Thousand ($25,C00.00) Dollars.

James A. Naddeo
Attorney for Defendant

E

June 14, 2000

Continental Construction, Inc.
P.O. Box 126
Johnsonburg Road
Ridgeway, PA 15853

Attention: Ms. Julee M. Marzella, Secretary/Treasurer

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01 : Sanitary Sewer
Shop Drawing Submittals

Dear Ms. Marzella:

Enclosed you will find your shop drawing submittals numbered1 to 11. As per your request, we have reviewed and take no exceptions to these submissions. Please be advised that this review was done as courtesy, and these submissions will not be considered binding until the Agreement has been executed and the Notice to Proceed has been issued.

If you have any questions or require further information, please contact our office.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manger

TAG:rmm

Enclosures

Cc: File 3334-2-Contract 2000-01

K:\PROJECTS\3334\3334-2\Contract 01\docs\letter\Shop Dwg rvw 1-11.doc

EXHIBIT "A"

I

Pennsylvania Department of Environmental Protection

208 West Third Street, Suite 101
Williamsport, PA 17701-6448

March 22, 2000

Northcentral Regional Office

Fax 570-327-3565

Richard J. Shimmel, Chairman
Wallaceton-Boggs Municipal Authority
P.O. Box 97
West Decatur, PA 16878

Re: General Permit Acknowledgment
DEP General Permit File No. GP051700501
and GP041700501
Wallaceton Borough and Boggs Township
Clearfield County

Dear Mr. Shimmel:

This will acknowledge receipt of your notification (copy enclosed) and registers your use of a General Permit issued by the Department of Environmental Protection. You are responsible for assuring the work is done in accordance with the drawings and conditions contained in the General Permit. You may proceed with your project after making the required notifications stipulated in the General Permit and securing all other approvals that may be necessary.

Also enclosed is your Federal Clean Water Act Section 404 authorization in the form of the Pennsylvania State Programmatic General Permit (PASPGP-1).

If you have any questions, please call Donald Ericson at 570-321-6561.

Sincerely,

F. Alan Sever

F. Alan Sever, P.E.
Chief, Soils & Waterways Section
Water Management Program

Enclosure

cc: Pa. Fish & Boat Commission, Northcentral Regional Office
Clearfield County Conservation District
U.S. Army Corps of Engineers, Baltimore District
Andrew S. Levine, P.E.
File

EXHIBIT "B"

FAS/DE/bls

EXHIBIT C

ACKNOWLEDGED
DATE: 3/22/00
GP 05170050 1

Notification to Use
BDWM-GP-5
Utility Line Stream Crossings

I/We, Wallaceton-Boggs Municipal Authority (owner name(s)), hereby notify the Bureau of Dams and Waterway Management of our intent to use Sample Drawing No. 1 to install

42,000 L.F. of Gravity Santiary Sewer; 8" PVC pipe
(size and description of utility line)

across/along Laurel Run, un-named streams, and wetland
(name of stream, body of water, or wetland)

at ~~approx~~ various points - see attached table
(describe location)

in Boggs Township & Wallaceton Borough (municipality) Clearfield (county).

I/We have attached a LOCATION MAP similar to that shown on the sample drawings indicating where the utility line will be installed.

I/We certify that a copy of this notification was sent this day 12/09/99 (date)

to Boggs Township & Wallaceton Borough (municipality), and Clearfield (county) in which the work will be performed.

Signed: [signature]
(owner or authorized representative)

P.O. Box 97
(owner address)

West Decatur, PA 16878

(814) 243 - 3626
(owner telephone number)

I/We hereby notify the Bureau that BDWM-GP-8, Temporary Road Crossing will also be utilized during the installation of the utility line.

Signed: N/A

Send to

WALLACETON – BOGGS SANITARY SEWER CONSTRUCTION PROJECT
DECEMBER 1999

RECEIVED
MAR 9 2000
WATER MGMT/DEP

TABLE A – STREAM CROSSINGS

Crossing No.	Stream Name	Sheet No.	Length of Crossing L.F.	Description
1	Laurel Run	5	30	90' west of LR 17122 and 190' north of Church Hill Road. 8" PVC gravity sewer between MH A-8 and MH A-9
2	Unnamed Tributary to Laurel Run	5	15	480' east of LR 17122 and 60' south of Boggs Twp. Bldg. 8" PVC gravity sewer between MH A-4 and MH A-5
3	Unnamed small stream	14	20	200 ' west of SR 0322 and 210' east of Arc Road (T-676) 8" PVC gravity sewer between MH A-37 and MH A-38
4	Unnamed small stream	16	35	870' south of Reed Street and 200' east of SR 2029 8" PVC gravity sewer between MH A-46 and MH A-47.
5	Unnamed small stream	16	35	600' south of Reed Street and 260' east of SR 2029 8" PVC gravity sewer between MH A-47 and MH D-1

Total = 135 ft. < 250 ft – OK to use SPGP

WALLACETON – BOGGS SANITARY SEWER CONSTRUCTION PROJECT
DECEMBER 1999

TABLE B – WETLAND CROSSINGS

Crossing No.	Wetland Designation	Sheet No.	Length of Crossing L.F.	Description
1	W	4	250 ✓	170' NE of Company Road 8" PVC gravity sewer between MH A-2 and MH A-3
2	V	4	30	580' NE of Company Road 8" PVC gravity sewer between MH A-1 and MH A-2
3	D	12	90	65' SW of SR 0322 and 260' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-32 and MH A-33
4	D	12	15	65' SW of SR 0322 and 360' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-32 and MH A-33
5	D	12	20	50' SW of SR 0322 and 400' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-31 and MH A-32
6	B	13	10	160' SW of SR 0322 and 700' NW of T-676 8" PVC gravity sewer between MH A-35 and MH A-36
7	H	15	100	215' East of SR 2029 8" PVC gravity sewer between MH A-43 and MH A-45
8	G	15	20	170' East of SR 2029 8" PVC gravity sewer between MH A-45 and MH A-46
9	F	15	25	170' East of SR 2029 8" PVC gravity sewer between MH A-45 and MH A-46
10	H	21	130	165' East of SR 2029 8" PVC gravity sewer between MH A-44 and MH B-1
11	P	28	20	40' SE of Reed Street 8" PVC gravity sewer between MH S-1 and MH S-2
12	Q	28	95	80' NW of Reed Street 8" PVC gravity sewer between MH S-3 and MH S-4
13	U	28	25	570' NW of Reed Street 8" PVC gravity sewer between MH S-3 and MH S-4
14	S/T	29	420 ✓	840' NW of Reed Street 8" PVC gravity sewer between MH S-5 and MH S-7
15	R	29	75	1300' NW of Reed Street 8" PVC gravity sewer between MH S-6 and MH S-8
16	V	38	125	590' NE of Company Road 8" PVC gravity sewer between MH AC-1 and MH A-1

Total = 1450 ft × 20 ft (easmt) = 29000 ft² < 1 acre (SPGP ok.)

300 × 150 = 45000

3630-PM-WQ0503 Rev. 7/98

FOR DEPT. USE ONLY

ACKNOWLEDGED:
DATE 3/22/00
GP 0417005 01

EXHIBIT C

NOTIFICATION TO USE
BDWM-GP-4
Intake and Outfall Structures

I/We, Wallaceton-Boggs Municipal Authority
(owner name(s))

hereby notify the Department of Environmental Protection of our intent to use

Drawing No. 3 to install a Penn DOT Type D-W

outfall structure
(description of intake or outfall structure)

across/along Laurel Run at a point approximately 600 feet east of L.R. 17122
(name of stream)

in West Decatur
(describe location)

in Boggs Township (municipality), Clearfield (county).

I/We have attached a LOCATION MAP similar to that shown on Drawing No. 1 indicating where the intake or outfall structure will be installed.

I/We certify that a copy of this notification was sent this day December 9, 1999 (date) to

Boggs Township (municipality) and Clearfield (county).

where the work will be performed.

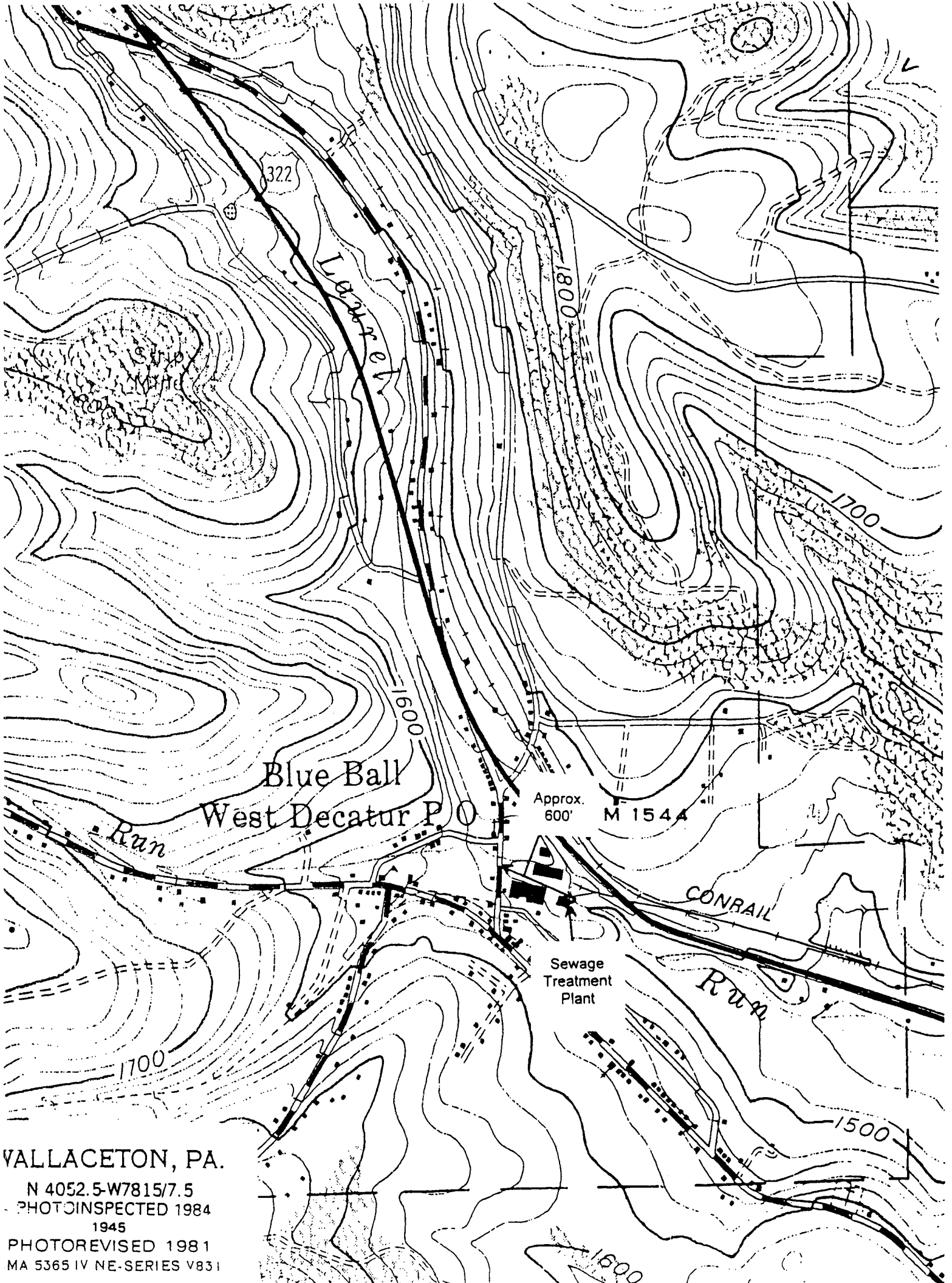
Signed: Richard J. Thomas
(owner or authorized representative)

P.O. Box 97
(owner address)

West Decatur, PA 16878

(814) 342-3626
(owner telephone number)

Send to one of the addresses on "Exhibit B" or the "County Conservation Districts" List.



VALLACETON, PA.

N 4052.5-W7815/7.5

PHOTOINSPECTED 1984

1945

PHOTOREVISED 1981

MA 5365 IV NE-SERIES V831

PENNSYLVANIA STATE PROGRAMMATIC GENERAL PERMIT
PASPGP-1
DECEMBER 1995

TO WHOM IT MAY CONCERN:

Upon the recommendation of the Chief of Engineers, and under the provisions of Section 404 of the CWA, as amended, and Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), the Secretary of the Army hereby authorizes the discharge of dredged, excavated, or fill material or structures into waters of the United States, including wetlands. These discharges and structures must comply with all the terms and conditions identified in this SPGP.

It has been determined that the project as authorized by the PA Department of Environmental Protection (PADEP) Authorization GP051700501 qualifies for the PA SPGP-1. Accordingly, you are authorized to undertake the activity pursuant to: #GP041700501

1. Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

2. Section 404 of the Clean Water Act (33 U.S.C. 1344).

You are authorized to perform work in accordance with the terms and conditions specified below.

For an activity involving a structure or discharge of dredged, excavated, or fill materials into waters of the United States to be authorized by this SPGP, it must meet the following requirements and conditions:

1. Proper maintenance. Any fill or work authorized shall be properly maintained, including maintenance to ensure public safety.

2. Erosion and siltation controls. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.

3. Aquatic life movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

4. Equipment. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance, including avoiding the use of such equipment, if possible.

5. National Wild and Scenic Rivers. Activities which occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system are not authorized by this SPGP. These designated rivers include:

(a) The Upper Delaware Scenic and Recreational River beginning at Hancock, New York, and continuing 73.4 river miles to Mill Rift, Pennsylvania.

(b) The Middle Delaware Scenic and Recreational River as it flows through the Delaware Water Gap National Recreation Area.

The Study Rivers include:

(a) The Lower Delaware River beginning seven river miles north of Belvidere, New Jersey, continuing to Washington Crossing, Pennsylvania, including Cooks Creek, Tinicum Creek and Tohickon Creek.

(b) The White Clay Creek watershed including all of its tributaries.

6. Tribal rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. Endangered Species. If the proposed activity may affect a Federal listed species or a species proposed for listing or their critical habitat, a District Engineer must initiate consultation with FWS or NMFS in accordance with the Federal Endangered Species Act (ESA) prior to authorization of the activity under the PASPGP-1. No activity is authorized under the PASPGP-1 which is likely to, individually or cumulatively, jeopardize the continued existence of a threatened or endangered

species or a species proposed for such designation, as identified under the ESA, or which is likely to destroy or adversely modify the critical habitat of such species identified under the ESA. If an activity is authorized under the PASPGP-1, and during construction a Federal listed species or critical habitat is found to be present, all work must cease and the permittee must notify the Corps of Engineers. The PASPGP-1 authorization is suspended until the conclusion of Section 7 consultation in accordance with the ESA. The PASPGP-1 authorization may be revoked for that specific project if the species or critical habitat is adversely affected. If it is determined that there will be no adverse effect or that an adverse effect can be mitigated, the PASPGP-1 will be reinstated for that specific activity with any appropriate mitigation conditions. Furthermore, persons have an independent responsibility under Section 9 of the ESA to not engage in any activity that would result in a "take" of a Federal listed species.

8. Cultural Resources. No activity is authorized under the PASPGP-1 which may adversely affect cultural resources listed or eligible for listing in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act are met. The applicant must notify the State Historic Preservation Officer (SHPO), at the Pennsylvania Historical and Museum Commission (PHMC), using the PADEP Historical Resources Determination Notice Form and include a copy of the form as proof of notification in their application. Upon the discovery of the presence of a previously unknown historic or archaeological site, all work must cease and the permittee must notify the SHPO and the Corps of Engineers. The SPGP authorization is suspended until it is determined, through the Section 106 consultation process, whether the activity will have an adverse effect on the cultural resource. The authorization under the PASPGP-1 may be reactivated or modified, through specific conditions if necessary, if it is determined that the activity will have no adverse effect on the cultural resource. The PASPGP-1 authorization may be revoked for the specific activity if the cultural resource will be adversely affected.

9. Water supply intakes. No discharge of dredged, excavated, or fill material or structure may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization, unless Corps approved and appropriate mitigation measures are to be implemented which will protect the water supply.

10. Shellfish production. No discharge of dredged, excavated, or fill material or structure may occur in areas of concentrated shellfish production, unless the discharge is directly related to an authorized shellfish harvesting activity.

11. Suitable material. No discharge of dredged, excavated, or fill material or structure may consist of unsuitable material or solid waste (e.g., trash, debris, car bodies, etc.) and all material discharged must be free from toxic pollutants in toxic amounts pursuant to Section 307 of the CWA.

12. Mitigation. Discharges of dredged, excavated, or fill material or structures into waters of the United States must be avoided and minimized to the maximum extent practicable at the project site. Once avoidance and minimization of unavoidable adverse impacts has been demonstrated, compensation mitigation may be used to offset unavoidable adverse impacts.

13. Spawning areas. Excavation, discharges or structures in spawning or nursery areas shall not occur during spawning seasons. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of the year.

14. Obstruction of high flows. To the maximum extent practicable, discharges or structures must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

15. Adverse impacts from impoundments. If the discharge or structures creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, including impacts to wetlands, shall be minimized to the maximum extent practicable.

16. Waterfowl breeding areas. Discharges or structures in breeding areas of migratory waterfowl must be avoided to the maximum extent practicable.

17. Removal of temporary fills. Any temporary fills or structures must be removed in their entirety and the affected areas returned to their preexisting elevation.

18. Inspections. The permittee shall permit a District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to ensure that the work is being performed in accordance with all the terms and conditions of the PASPGP-1.

19. Single and Complete Projects. The PASPGP-1 shall not be used for piecemeal work and shall be

applied to single and complete projects. All components of a single project shall be treated together as constituting one single and complete project. All planned phases of multi-phased projects shall be treated together as constituting one single and complete project. For purposes of this condition, all previously authorized phases of multi-phased projects will remain authorized, unless expired, and any additional planned phases will be evaluated for authorization, cumulatively with the previously authorized phases as a single and complete project. This general permit shall not be used for any activity that is part of an overall project for which an individual permit is required.

20. False and Incomplete Information. If any of the information contained in the Pennsylvania/Corps Joint Permit Application, PADEP General Permit registration, PADEP Environmental Assessment and/or plans is found to be in error, falsified, and/or incomplete, the PASPGP-1 authorization may be subject to modification, suspension, or revocation in accordance with 33 CFR 325.7.

21. Section 404(b)(1) Guidelines. No activity may be permitted under the PASPGP-1 that is not in full conformity with the Section 404(b)(1) Guidelines. The Corps is responsible for insuring compliance with the Guidelines.

22. Agricultural activities. For Pennsylvania waivers 7 or 8 to qualify for the PASPGP-1, the activities must be part of an established (i.e., on-going) farming, silviculture, or ranching operation. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land.

23. Expiration Date. This authorization is valid for the same period as the project specific PADEP authorization, not to exceed three years; and shall not exceed three years for PADEP General Permits.

By Authority of the Secretary of the Army:

Colonel Randall R. Inouye, P.E.
Baltimore District Engineer

Lieutenant Colonel Robert P. Magnifico
Philadelphia District Engineer

Colonel Stephen B. Massey
Pittsburgh District Engineer

SWEETLAND ENGINEERING & ASSOCIATES, INC.
600 SCIENCE PARK ROAD
STATE COLLEGE, PA 16803
PHONE: (814) 237-6518
FAX: (814) 237-1488

FIELD SPEED MEMO

TO: Centennial Construction

FROM: Ron Senior (SEA)

DATE: 10-30-00

SUBJECT: Moving A Line MH-21 to MH-28

SEA JOB #: 3334-2 **CONTRACT NO.** 2000-01

DESCRIPTION: This is a work direction to move manhole Along A Line to MH 21 to MH-28 Away from the roadway a maximum of 10' to be directed by SEA's field Representative. The Contractor is to Remove the 163' of Line that was already placed out of MH-20. The work direction is to show a Credit Due for the Saw Cutting of the road. This is being issued to exclude this aspect as the contractor is not prepared for Saw Cutting operations as specified. This will be paid by Unit Prices of the bid Documents.

Engineer Representative: Ron A Senior

Contractor Representative:

Owner Representative: Leland Shirk

K:/PROJECTS/CONST.ADM/FIELDMEM Bud Brown
Job Dem

EXHIBIT "C"

P

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail; admin@sweetland-eng.com

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Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

October 31, 2000

Continental Construction
PO Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01, Sanitary Sewer Construction Project
Work Directive No. 1

Dear Ms. Marzella:

In accordance with the WBMA directive, you are hereby directed to proceed with the realignment of the Sanitary Sewer Line at Manholes A-20 through A-28.

The attached Work Directive is to relocate the above mentioned Manholes to eliminate any additional costs due to sawing of the additional pavement thickness, and eliminate additional work to the Contractors schedule.

Upon review of previous documentation concerning equipment used by CCI to saw cut the pavement, an equipment rate of $16.50/hour was used and $30.36/hour for an operator. The equipment used by CCI will cut an approximate 125 LF/hour which equals a credit of $2.66/LF X 2,400 LF equals $6,400.00.

With removal of the sanitary line from under paved areas, a credit for deletion of pavement is required. SEA has estimated a deletion of 800 SY of paving restoration. With unit costs of $10.40/SY for 4" of BCBC and $5.85 for 1 ½ of ID-2 Wearing Course, the approximate credit for paving restoration is $13,000.00.

EXHIBIT "D"

There will be a minimal cost for additional grass area restoration due to relocation of the sanitary line. CCI had previously submitted .25 cents/LF for restoration of grass areas. Upon review SEA amended that estimate to .50 cents/LF for restoration of grass areas, which would equate to an add of $1,200.00.

CCI has already placed an approximate 163LF of sanitary line from MH A-20 towards MH A-21. The revised location of MH A-21 will require removal and replacement of the above mentioned 163 LF of sanitary line.

The Authority will pay for the relocation of this line by use of unit cost for sanitary line installation 6'-8' deep of $19.00/LF or approximately $3097.00 increase to be added by units installed.

The attached summary is only approximate, the quantities will be verified to expedite the appropriate Change Order.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

Cc: WBMA
George S. Test, Esquire
U.S. Army Corps of Engineers, Pablo Colon-Garay
PennVEST, Bill Malinich
File 3334-2;Contract 2000-01

Approximate Credit Due for Sanitary Line Relocation

Approximately 2400 LF of Saw Cutting not needed	$ 6,408.00
Approximately 800 SY pavement restoration	$13,000.00
Subtotal Credits	**$19,408.00**
Add for Grass Restoration 2400 LF	$ 1,200.00
Add by Unit Cost tc bid items for replacement Of 163 LF of line	$ 3,097.00
Subtotal Adds	**$ 4,297.00**

Summary:

Credits	$19,408.00
Adds	- $ 4,297.00
Credit to the Authority	**$15,111.00**

WORK CHANGE DIRECTIVE

No. 1

DATE OF ISSUANCE 10/31/00 EFFECTIVE DATE 10/31/00

OWNER Wallaceton-Boggs Municipal Authority

CONTRACTOR Continental Construction, Inc.
Contract: Contract 2000-01
Project: Sanitary Sewer Construction Project
OWNER's Contract No. 2000-01 ENGINEER'S Project No. 3334-2

You are directed to proceed promptly with the following change(s):

Description:
Move Manholes A21 through Manholes A-28 from the roadway, a maximum of 10' as directed by Sweetland Engineering & Associates, Inc.'s RPR. Remove the approximate 163 LF of sanitary line previously placed out of Manhole A-20. The Contractor will be paid unit price for replacement of the 163' of line installed in revised alignment

Purpose of Work Change Directive:
To move the sanitary sewer line from in the roadway to eliminate additional cost for extra pavement thickness, and eliminate extra work for the Contractor.

Attachments: (List documents supporting change)
See Attached Letter, and Field Speed Memo.

If OWNER or CONTRACTOR believe that the above change has affected Contract Price any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in Contract Price:

- [x] Unit Prices
- [ ] Lump Sum
- [ ] Cost of the Work To be determined

Estimated **(decrease)** in Contract Price:
$ 15,111.00
If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract Times: 0 days
Substantial Completion: 180 days;
Ready for final payment: 240 days.

RECOMMENDED:
Sweetland Engineering & Associates, Inc.
ENGINEER
By:

AUTHORIZED:
Wallaceton-Boggs Municipal Authority
OWNER
By Christopher L. Burgo

EJCDC No. 1910-8-F (1996 Edition)
Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

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BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

November 1, 2000

Continental Construction
PO Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01, Sanitary Sewer Construction Project

Dear Ms. Marzella:

To help clarify any questions concerning the Work Directive No. 1 associated with the relocation of MH A21 through MH A-28, we have the following comments.

The equipment rate was established previously for an earlier request for a Change Order for roadway saw cutting (September 28, 2000 saw cut pavement cost adjustment request). The amount of roadway cut per hour was established by visual verification of the CCI equipment in use on another section of roadway.

The estimated 800 SY of pavement restoration was established by estimating an average of 3' wide by an approximate 2400 LF of pavement area that would have required replacement. Any pavement restoration not done will be adjusted as a Change Order at the completion of the project by use of a quantities adjustment Change Order.

The additional fees for grass restoration was based on actual figures submitted by CCI and amended by SEA.

In addition, the replacement of the 163 LF of pipe previously installed, the Contractor will be paid when pipe as been replaced in accordance with applicable bid Item.

In summary, the paving restoration, the pipe replacement, and the restoration of Grass areas will be adjusted by the use of unit cost pay items. The only item that will require an executed change order is the credit for not saw cutting the road. When we have finalized the quantities of sawing that was deleted, we will prepare the proper change order request.

As stated in our earlier correspondence all MH relocation will be coordinated through SEA RPR on-site with a maximum movement of 10' from the original location. There are not any easements affected by the relocation because there is a 60 foot Township Right-of-Way in this area.

Should CCI choose not to proceed in accordance with Work Directive No. 1, they will be in violation of the Contract Requirements. If the Contractor disagrees with the determination of the Engineer, they are to proceed in accordance with paragraph 10.05 of the General Conditions (reference G.C. 10.01 A and B).

We are hopeful that this clarifies any questions you may have concerning the relocation of manholes. Please inform SEA's RPR of your proposed schedule to begin work in this area to allow coordination of manhole locations.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

Cc: WBMA
George S. Test, Esquire
U.S. Army Corps of Engineers, Pablo Colon-Garay
PennVEST, Bill Malinich
File 3334-2;Contract 2000-01

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Fax: (570) 882-8299

November 16, 2000

Continental Construction, Inc.
P.O. Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: Wallaceton-Boggs Municipal Authority
Contract 2000-01; Sanitary Sewer Construction Project

Dear Ms. Marzella:

In accordance with the WBMA, we are hereby issuing Notice to Proceed with work in accordance with Work Directive No. 1 to move the Sanitary Line Construction off of Laurel Run Road.

The Authority acknowledges the fact that the lateral crossings must be cut across the concrete roadway. The Authority will pay for lateral saw cutting at a rate of $3.32/LF of saw cutting. This rate is established by use of the previous cutting of 2400 LF at $7,957.00. All revised manhole locations have been marked with one (1) manhole added manhole, with a rim elevation of 1592.60and an invert in of 1581.25 and an invert out of 1581.05. All adjustments will be paid in accordance with unit cost prices. An SEA RPR will be in the area of relocation to document any added work, i.e. move mail boxes, head walls, etc., that would not have been required at the original line location. In addition, the sanitary line at Arc Road has been adjusted to eliminate extensive roadway saw cutting and restoration in that area. The revised manhole locations have also been marked in the area of Arc Road. SEA will have a representative present to address any additional items requiring movements due to the relocation of the line. All additional work required, that is not established in unit cost bid items, must be verified by and agreed to on a daily basis by CCI and the SEA RPR.

A summary of additional material and labor must be signed off every day, by each party. We have attached a marked up plan of manhole relocations for your use. A copy of this letter and the marked plan has been hand delivered to your field personnel.

At the completion of the relocation, we will summarize any additional costs associated with the relocation, and recommend a Change Order, based on daily agreed upon labor and materials. We are hopeful that we have addressed all issues, and believe this will expedite the project schedule.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

TAG:rmm

Attachments

Cc: WBMA
U.S. Army Corps of Engineers, Pablo Colon-Garay
DEP, Bill Malinich
Mr. George Test
File 3334-2; Contract 2000-01

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SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

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February 13, 2001

Continental Construction, Inc.
P.O. Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: Wallaceton-Boggs Municipal Authority
Contract 2000-01; Sanitary Sewer Construction Project

Dear Ms. Marzella:

We have recently received a phone call from the WBMA regarding several verbal complaints associated with the conditions of the roadways, driveways, and access to resident homes throughout the project area. These areas are:

- In the area of MH A-48 through A-51 at Baughman Street
- Bigler Street Crossing
- I Line – Grass Areas
- H Line – Crossings and driveways
- Alley between A Line and O Line
- Harbison Street
- Two Crossings on Arch Road
- 1 Driveway on Y Line
- Railroad Street
- All SR 2024 Crossings
- Top Section of Sportmans Road

Due to the forecasted rain for the next few days, we believe these areas will continue to deteriorate. In accordance with Section 01010, 1.09.B these crossings shall be maintained properly to eliminate rough sunken, raised, or otherwise unsafe conditions by the Contractor. In addition, the deteriorated roadways, driveways, etc., have become a public nuisance. In

EXHIBIT "E"

accordance with Section 01010, 1.09.E, should a public nuisance be created by the Contractor in the opinion of the Owner, then upon written notice the Owner may request the appropriate Authority having jurisdiction where the nuisance occurs to correct the damage and the cost of the work shall be deducted from any amounts otherwise due or to become due the Contractor.

CCI's immediate action is required to repair or replace any deteriorated driveways, walkways, roadways or accesses that may exist on the project.

Consider this written notification of a public nuisance due to the deteriorated areas. Should CCI choose not to take immediate action to repair or replace these deteriorated areas all areas will be repaired or replaced, and all associated costs will be deducted from CCI's next payment.

Please coordinate all exact locations and revisions with our on-site RPR, Mr. Ron Senior, and proceed immediately with the appropriate action required to eliminate this issue.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

Cc: WBMA
US Army Corps of Engineers, Pablo Colon-Garay
DEP, Bill Malinich
George S. Test, Esquire
SEA Field Office
File 3334-2; Contract 2000-01

#20326

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WALLACETON-BOGGS MUNICIPAL AUTHORITY

P.O. BOX97
WEST DECATUR, PA 16878

16 November 2000

Sweetland Engineering & Associates, Inc.
600 Science Park Road
State College PA 16803

ATTEN: Tracy Gardner

Subject: Contract 2000-01
Collection & Conveyance System

Dear Mr. Gardner:

Reference your letter dated 8 November 2000 to Continental Construction Inc. regarding the additional wye fittings allegedly installed under the above subject contract.

The Authority is unaware of any directive which permitted the installation of any additional fittings on this project.

It is our understanding that Continental has requested a change order for the additional 6" x 4" wyes which they state that they were directed to install. Continental has requested an increase in the contract price of $80.00 per wye and a 30-minute extension of time per wye.

The Authority obtained pricing from a local pipe supplier for a 6" x 4" wye. That price per wye was $14.00. It is incomprehensible to Authority members that adding 30 minutes labor to the cost of a $14.00 wye would result in an installed price of $80.00 per wye.

It is the Authority's position that they did not direct the installation of the wyes and are not interested in having the contractor install the wyes. At some later date, the Authority may decide to purchase wyes for the sanitary sewer laterals and provide them free-of-charge to the system users when they begin to connect to the system.

Sincerely,

Christopher P. Bungo

Christopher P. Bungo, Secretary/Treasurer

xc: Project File wbma/cor
George Test, Esquire

EXHIBIT "F"

30109

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SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

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Fax: (570) 882-8299

October 4, 2000

Continental Construction
PO Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01, Sanitary Sewer Construction Project

Dear Ms. Marzella:

Upon review of your letter dated, September 29, 2000, concerning our phone conversation on September 15, 2000, I have the following clarifications that I would like to note.

I did not state that Continental Construction, Inc., could have obtained information from the Wallaceton-Boggs Municipal Authority (WBMA) or the community about subsurface conditions. I believe I stated that you **may** have obtained information from the above mentioned parties. I also did not state that the above referenced parties were aware of subsurface structures. I stated that there might have been many people in the area that knew of a brick yard in the areas. In addition, I did not state that it was common knowledge that items were buried underground, only that the brick yard was common knowledge.

Additionally, I did not reference illegally buried structures, your question was "did we know that items were buried illegally in the area." I stated that at the time items were buried, it may not have been illegal.

You continue to reference buried structures in your letter, but I do not recall discussions directly addressing prior knowledge of buried structures. The WBMA or SEA did not have any prior knowledge of underground structures or conditions other than what was reported in core boring reports supplied with the Contract Documents. In accordance with the Contract Documents, all excavation is unclassified.

EXHIBIT "G"

The Contract Documents give the Contractor permission to perform exploratory excavation prior to bidding, this option was not taken by Continental Construction.

In an effort to eliminate any further misinterpretation at verbal communication, we are requesting all correspondence in writing.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

TAG:rmm

Attachment

Cc: George S. Test, Esquire
WBMA
File 3334-2; Contract 2000-01

CONTINENTAL CONSTRUCTION, INC.

PO BOX 126
RIDGWAY, PA 15853
PHONE: 814-776-6126 FAX: 814-776-6121
EMAIL: julcc@penn.com

RECEIVED
OCT 03 2000
SWEETLAND ENGINEERING AND ASSOCIATES

September 29, 2000

Mr. Tracy A. Gardner
Sweetland Engineering & Associates, Inc.
600 Science Park Road
State College, PA 16803

Re: Contract 2000-01, Sanitary Sewer Project
Wallaceton-Boggs Municipal Authority

Dear Mr. Gardner:

On September 15, 2000 at approximately 9:40 AM, you and I had a telephone conversation during which we discussed your letter dated September 14, 2000 concerning unclassified excavation in the areas between manholes AE-2 through A-3 and A-3 through A-5.

During our conversation, you stated that at the time of bid, we should have assumed that we would be encountering brick and concrete structures during excavation in these areas since there were bricks present on the ground surface before the project bid. I disagreed and asked how we could have possibly known about the sand and ash pits that we encountered in the trench. You stated that we could have obtained that information from a WMBA member or anyone who lives in this area since some members of the WBMA and the community knew of the existence of these subsurface structures. You even said it was common knowledge in the area that a brickyard existed on this site and that these items were buried underground. I responded that we would not assume that someone illegally buried structures such as those encountered just because there were a few bricks lying on the ground. You said that it might not have been illegal to bury these structures years ago, at the time when they were actually buried. Nonetheless, you still contended since you and some Authority members had knowledge of these buried structures that we had access to this information and failed to ask.

The WBMA and SEA were well aware of these hidden underground conditions and structures prior to the bid date and failed to disclose this information to the bidders. Despite the fact that the WBMA/SEA had knowledge of these items, they failed to put this information in the bidding documents.

We have completed the sewerline work in this area per your direction. We have documented all extra time and expense associated with removing this material. An invoice for these additional costs and extra time will be forthcoming. The above is supplementing information to our letter of September 18, 2000 regarding this issue.

Sincerely,
Continental Construction, Inc.

Julee M. Marzella, Sec/Treas.

Cc: Mr. Kevin McKeon, Fluke, Weiers & Schmitt, P.C.

#20110

V

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

October 5, 2000

Continental Construction
PO Box 126; Johnsonburg Road
Ridgway, PA 15853
Attention: Ms. Julee Marzella

RE: Wallaceton-Boggs Municipal Authority
2B Stone

Dear Ms. Marzella:

In response to Continental Construction, Inc. Letter dated October 4, 2000, attached for your reference, concerning HRI, Inc. – Eastern Region's use of 2B stone for pipe bedding, we have the following response.

HRI, Inc.'s use of 2B Stone as pipe bedding was accepted by the WBMA with two conditions. The first condition is that the Contractor issue a credit to the WBMA for the substitution of 2B stone for the specified 2A.

The second condition is that the contractor install a subsurface drain from the low point in the trench to daylight, to allow discharge of any water that my collect in the 2B Stone. The Contractor agreed to both conditions noted and proceed with pipe installation. We believe the above referenced conditions were offered to Continental Construction for the use of 2B pipe bedding for Contract 2000-01 and were not acceptable to Continental Construction, Inc.

We hope that this letter will clarify any concerns you may have associated with the piping installation on Contract 2000-02.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner, emm

Tracy A. Gardner
Construction Services Manager

Attachment

Cc: WBMA
George S. Test, Esquire
U.S. Army Corps of Engineers
File 3334-2; Contract 2000-01

K:\PROJECTS\3334\3334-2\Contract 01\docs\letter\Cont 10-5-00.doc

EXHIBIT "H"

WALLACETON-BOGGS
DEFECTIVE MANHOLES/UNKNOWN COSTS LIST

Four manholes are still defective on the project: MH AE-19, MH O-1, MH K-1, and MH A-68.

Cost Breakdown using T/C and Invert numbers supplied by CCI on the project as-built drawings.

4 MH @ $1100.00 each	cost	$4400.00
7.13 VF @ $60.00 VF	cost	$ 427.80
	Total cost	$4827.80

UNKNOWN COST LIST:

1.	Areas cleared outside of the established easements.	Cost:?
2.	Sewer lines installed at less than designed slopes.	Cost:?
3.	Sewer lines installed out of established easement areas.	Cost:?
4.	Repairs for unknown property damage.	Cost:?

EXHIBIT "I"

FINAL COMPLAINT COST FOR WBMA

NOTE: THE NUMBERS THAT ARE LISTED BEFORE EACH ITEM CORRESPOND TO THE RESPONSE NUMBER OF INDIVIDUAL COMPLAINTS CURRENTLY NOT ADDRESSED.

PLANTINGS

COMPLAINT RESPONSE NUMBER		
4.	(2) JUNIPERS	$50.00
12.	(2) ROSE OF SHARON	$80.00
16.	(40 LF) PRIVET HEDGE 4-5' HIGH	$830.00
17.	(6) JUNIPERS, MULCH, "Something Wisteria"	$500.00
15.	(3) BLUE SPRUCE PINE TREES 4-5' HIGH	$200.00
19.	(1) JAPANESE MAPLE 4-5' HIGH	$150.00
19.	(1) RED AZALEA 2' HIGH	$25.00

3., 12., 15., 17., 18., 19., & A-12 TO A-26, K-2 TO K-3, CARAM PROPERTY (A-48 TO G-1) 4" TOPSOIL AND SEEDING

1627SY @ $2.40 SY $3904.80

PIPING

1.	EXTEND LATERAL APPROX. 40 LF @ 18.00 LF	$720.00
5.	REIMBURSE HOMEOWNER FOR REPAIRS COMPLETED	$223.56
15.	REPLACE (2) 20' SECTION OF 12" CMP	$500.00
15.	REPAIR WATER WELL DRAINAGE LINE	$200.00
15.	REPAIR BASEMENT DRAIN	$100.00

EARTH WORK

1.	RECONSTRUCT DITCH LINE TO CORRECT DEPTH AND PATH	$500.00

ROADWAY REPAIRS

8.	REGRADE DIRT ROAD	$300.00
9.	REPAIR SETTLED DRIVEWAY PAVEMENT	$650.00
4., 6.,	DRIVEWAY REPAIRS	$500.00

SURVEY

COMPLAINT RESPONSE NUMBER		
7., 8., 11., 13., 14.	RESET PROPERTY PINS	$2500.00

VEHICLE DAMAGES

5.	BROKEN WINDSHIELD	$145.00
10.	TRUCK TIRE AND ALIGNMENT	$150.00

DEBRIS REMOVAL/CLEANUP

2., 8., 19.,		$2500.00

MISCELLANEOUS ITEMS

15.	FENCE REPAIR	$150.00
15.	MAILBOX REPAIR	$45.00
	RESET FENCE AT CARAM PROPERTY	$150.00
	SUPPLY 30 TON 2B AND 6-8 TON 2RC TO WALLACETON BOROUGH.	$500.00
19.	REPAIRS TO GRAPE ARBOR	$100.00

ESTIMATED TOTAL COST FOR COMPLAINT REPAIRS

$15673.36

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared RICHARD SHIMMEL, Chairman of the Wallaceton-Boggs Municipal Authority, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer to Complaint and Counterclaim are true and correct to the best of his knowledge, information and belief.

Richard Shimmel

SWORN and SUBSCRIBED before me this 8th day of October, 2001.

Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUANTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Defendant's Answer to Complaint and Counterclaim filed in the above-captioned action was served on the following person and in the following manner on the 9th day of October, 2001:

First-Class Mail, Postage Prepaid

Kevin J. McKeon, Esquire
Fluke, Weiers & Schmitt, P.C.
1400 The Bank Tower
Pittsburgh, PA 15222

James A. Naddeo
Attorney for Defendant

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

1 an over margin

FILED
OCT 08 2001
William A. Shaw
Prothonotary

1cc Atty Naddeo

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.,	No. 01-1265-CD
Plaintiff,	**ANSWER TO COUNTERCLAIM**
v.	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	Counsel of Record for this Party:
Defendant.	Kevin J. McKeon Pa. I.D. No.: 76232
	Filed on behalf of: Continental Construction, Inc.
	FLUKE, WEIERS & SCHMITT, P.C. 1400 The Bank Tower Pittsburgh, PA 15222
	Firm I.D. No.: 029

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff, v. WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant.	No. 01-1265-CD **ANSWER TO COUNTERCLAIM**

ANSWER TO COUNTERCLAIM

AND NOW COMES the Plaintiff, Continental Construction, Inc. ("CCI"), and in response to the Counterclaim filed on behalf of the Defendant, Wallaceton-Boggs Municipal Authority ("Authority") answers as follows:

1. In response to the Authority's Counterclaim, CCI hereby incorporates the averments set forth in the Complaint as if set forth in full.

COUNT I

2. The averments set forth in Paragraph 209 of the Authority's Counterclaim are Admitted, as previously alleged in the Complaint at Paragraph 8.

3. The averments set forth in Paragraph 210 in the Authority's Counterclaim are Admitted, as previously alleged in the Complaint at Paragraph 8.

4. The averments set forth in Paragraph 211 of the Authority's Counterclaim are Admitted, as previously alleged in the Complaint at Paragraph 9.

5. The averments set forth in Paragraph 212 of the Authority's Counterclaim are Admitted.

6. The averments set forth in Paragraph 213 of Counterclaim are specifically Denied. To the contrary, at the Authority's September 25, 2000 meeting, the Authority determined that it did not have the funds to pay for certain additional work on the Project resulting from errors, omissions, and inaccuracies in the Contract Documents, and proposed suing PennDot. The Engineer then advised the Authority that it could just order CCI to perform the additional work without having to pay for it until the end of the Project. In response to these comments, Julee Marzella requested that the Authority disclose funding sources sufficient to compensate CCI for the additional work occasioned by the defective Contract Documents. At no time did Julee Marzella indicate that CCI had "under bid" the Project, and instead, at all times Julee Marzella represented that she had properly bid the Project that was represented in the Contract Documents. However, the Project represented in the Contract Documents was entirely different from the as-built Project.

7. The averments set forth in Paragraph 214 of the Authority's Counterclaim are specifically Denied, and to the contrary, CCI initiated construction activities including mobilization and set-up even prior to receipt of Notice to Proceed or execution of the Contract, despite the Authority's failure to acquire a PennDot highway occupancy permit, and as set forth in the Complaint at Paragraph 10.

8. The averments set forth in Paragraph 215 of the Authority's Counterclaim are specifically Denied, and to the contrary, at all times during the course of construction, the officers, employees, and agents of CCI dealt with the Authority, its employees and agents in a good faith and business-like manner. By way of further response, the Authority, its employees and agents consistently treated the officers, employees and agents of CCI with disrespect, and

even went so far as to refuse to accept oral communication from CCI, as previously alleged in the Complaint.

9. The averments set forth in Paragraph 216 of the Authority's Counterclaim are specifically Denied. To the extent that the Authority alleges that CCI failed to adopt a "viable construction plan" or to adhere to a "construction time table," it is specifically averred that even prior to commencing construction, and at all times throughout the course of the Project, CCI properly planned the course of construction and performed its work in an expeditious manner. Throughout the course of the Project, CCI updated the as-planned construction schedule with each Application for Payment in accordance with Section 001300 (1.04)(C), and as requested by the Engineer. Through no fault of CCI, CCI was unable to adhere to the terms of its original as-planned schedule due only to the failure of the Authority, its employees and agents to properly design and plan the Project as originally represented in the Contract Documents.

10. The averments set forth in Paragraph 217 of the Authority's Counterclaim are specifically Denied, and to the contrary, it is averred that:

(a) CCI never represented that the manhole "covers" manufactured by McGill were approved by PennDot, and instead, the Authority and its Engineer approved the McGill manholes as submitted, which in fact did comply with the material specification at Section 02730 (2.04) of the Contract Documents;

(b) CCI properly followed the scope of the E & S controls set forth in the Contract Documents, and the Plan was only revised due to the Authority and Engineer's failure to insure that the initial plan in the Contract Documents was properly approved by the DEP, and was supported by the appropriate permits;

(c) CCI did request a 92 day time extension as a result of the DEP order to halt construction because, as further set forth previously in the Complaint, the limits placed on construction by DEP significantly inhibited CCI's ability to perform its work in accordance with its as-planned schedule, and in accordance with reasonable construction procedure;

(d) CCI's claims for unforeseen and differing sight conditions resulted only from errors, omissions and inaccuracies on the part of the Engineer and the Authority in preparing the Contract Documents;

(e) CCI did perform a proper site inspection as previously alleged in the Complaint at Paragraph 57, and CCI did properly inspect its "right-of-way needs," and the Authority consistently indicated that it would not approve payments for any exploratory excavation;

(f) CCI did request reasonable additional compensation to relocate a storm water line and did request a reasonable extension of time as a result of changes made by the Engineer and the Authority;

(g) CCI's request for additional compensation and an extension of time associated with relocating manholes A-51 through A-53 was reasonable and resulted only from the Engineer's and Authority's change to the Contract Documents;

(h) CCI's request for reasonable additional compensation and extension of time associated with relocating manholes A-21 through A-28 was the result only of the changes made by the Engineer and Authority;

(i) CCI never presented any "fraudulent" claims, and did specifically replace unsuitable material consisting of brick, soil and ash, with fill in the amount of 2876.36 cubic yards.

(j) CCI at all times complied with its obligations under the Contract Documents with regard to road repairs;

(k) CCI did present a claim for additional compensation based on the Authority's failure to provide two on-site dumpsites due to the fact that the Authority and Engineer represented that two on-site dumpsites would be provided prior to bidding;

(l) CCI's claim for $80 per installation of additional wyes resulted only from the Engineer and Authority's change to the Contract Documents, which amount was reasonable. By way of additional response, the Authority did instruct CCI not to install the subject wye's and CCI's Complaint does not request compensation for doing so;

(m) CCI did threaten the Authority with a Civil Rights Action because of the discriminatory conduct exhibited by the Authority, its employees and agents;

(n) CCI never made oral or written misrepresentations to the Engineer;

(o) The Project was delayed only due to the fault of the Authority and its Engineer, as set forth in greater detail in the Complaint; and

(p) The Project is, and has been, finally complete.

WHEREFORE, Continental Construction, Inc. hereby demands judgment in its favor and against the Wallaceton-Boggs Municipal Authority.

COUNT II

11. In response to Paragraph 218 of the Authority's Counterclaim, the answers, denials and responsive averments set forth above are incorporated herein by reference as if set forth in full.

12. The averments set forth in Paragraph 219 of the Authority's Counterclaim constitute a conclusion of law to which no response is required. To the extent a response may be deemed necessary, it is specifically Denied that CCI delayed the Project in any way. By way of further response, CCI is without knowledge sufficient to form a belief as to the truth of the remaining averments set forth in Paragraph 219 of the Counterclaim, and therefore, such averments are denied and strict proof thereof demanded at time of trial.

13. The averments set forth in Paragraph 220 of the Authority's Counterclaim constitute a conclusion of law to which no response is required. To the extent a response may be deemed necessary, it is specifically Denied that CCI delayed the Project in any way. By way of further response, CCI is without knowledge sufficient to form a belief as to the truth of the remaining averments set forth in Paragraph 220 of the Counterclaim, and therefore, such averments are denied and strict proof thereof demanded at time of trial.

14. The averments set forth in Paragraph 221 of the Authority's Counterclaim constitute a conclusion of law to which no response is required. To the extent a response may be

deemed necessary, it is specifically Denied that CCI delayed the Project in any way. By way of further response, CCI is without knowledge sufficient to form a belief as to the truth of the remaining averments set forth in Paragraph 221 of the Counterclaim, and therefore, such averments are denied and strict proof thereof demanded at time of trial.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor and against the Defendant, Wallaceton-Boggs Municipal Authority.

COUNT III

15. In response to Paragraph 222 of the Authority's Counterclaim, the answers, denials and responsive averments set forth above are incorporated herein by reference as if set forth in full.

16. The averments set forth in Paragraph 223 of the Authority's Counterclaim are specifically Denied, as CCI has fulfilled all of its obligations pursuant to the Contract Documents.

17. The averments set forth in Paragraph 224 of the Authority's Counterclaim are specifically Denied, and to the contrary, CCI has fulfilled all of its obligations pursuant to the Contract Documents.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor and against the Defendant, Wallaceton-Boggs Municipal Authority.

Respectfully submitted,

FLUKE, WEIERS & SCHMITT, P.C.

Kevin J. McKeon,
Attorney for Continental Construction, Inc.

VERIFICATION

I, Julee Marzella, President of Continental Construction, Inc. hereby verify that the statements made in the foregoing Answer to Counterclaim are true and correct to the best of my knowledge, information and belief. These statements are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Julee Marzella

CERTIFICATE OF SERVICE

I, Kevin J. McKeon, do hereby certify that a true and correct copy of the foregoing Answer to Counterclaim filed in the above-captioned action was served upon the following on the 8th day of November 2001, via Hand Delivery:

James A. Naddeo, Esquire
211 1/2 Box 552
Clearfield, PA 16830
(814)765-1601

Kevin J. McKeon

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.,
Plaintiff,

v.

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,
Defendant.

No. 01-1265-CD

Type of Pleading:

Petition to Join an
Additional Defendant

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

DEC 07 2001
0/3:30/ns
William A. Shaw
Prothonotary

2 cert to Atty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant.	*	

RULE

AND NOW, this 10th day of December, 2001, upon consideration of the attached Petition to Join an Additional Defendant, a Rule is hereby issued upon Defendant and Sweetland Engineering & Associates, Inc. to Show Cause why the Petition to Join an Additional Defendant should not be granted. Rule Returnable for written response on the 31st of December, 2001.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION, YOU MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Market Street
Clearfield, PA 16830
(814) 765-2641

FILED

DEC 10 2001
0/2,55/acc atty
William A. Shaw
Prothonotary Notified

BY THE COURT,

Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant.	*	

PETITION TO JOIN AN ADDITIONAL DEFENDANT

NOW COMES the Defendant, Wallaceton-Boggs Municipal Authority, and by its attorney, James A. Naddeo, Esquire, sets forth the fcllowing:

1. That your Petitioner is Walleceton-Boggs Municipal Authority, a Municipal Corporation duly formed under the laws of Pennsylvania.

2. That your Petitioner believes and therefore avers that on or about August 3, 2001, Plaintiff in this action attempted service upon the Petitioner by delivering a certified copy of Plaintiff's Complaint to the office of the Wallaceton Township Supervisors.

3. That Petitioner, through its solicitor, George Test, informed Plaintiff that it had failed to effect proper service upon your Petitioner and that Mr. Test, as solicitor for Wallaceton-Boggs Municipal Authority, would accept service upon Plaintiff's Complaint.

4. That subsequently, Plaintiff and Petitioner agreed that Petitioner would file an Answer to Plaintiff's Complaint on or before October 8, 2001, in consideration of which Petitioner would refrain from filing an objection to service.

5. That Petitioner filed its Answer and Counterclaim in this matter on October 8, 2001, as agreed.

6. That your Petitioner believes and therefore avers that its project engineer, Sweetland Engineering & Associates, Inc., is solely liable, liable over to the Petitioner or jointly and severely liable with your Petitioner on Plaintiff's cause of action.

7. That your Petitioner seeks leave to join Sweetland Engineering & Associates, Inc. as an additional Defendant in this action.

8. That Petitioner believes and therefore avers that no party will be prejudiced should the Court allow a joinder of Sweetland Engineering & Associates, Inc. as an additional Defendant.

WHEREFORE, Petitioner respectfully requests a Rule be entered upon Plaintiff and upon Sweetland Engineering &

Associates, Inc., to show cause why Plaintiff should not be allowed to join Sweetland Engineering & Associates, Inc. as an additional Defendant in this action.

James A. Naddeo

James A. Naddeo
Attorney for Defendant

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED

DEC 07 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.,
Plaintiff,

v.

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,
Defendant.

No. 01-1265-CD

Type of Pleading:

Amended Rule to Petition to Join Additional Defendant

Filed on behalf of:
Defendant

Counsel of Record for this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

DEC 13 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant.	*	

RULE

AND NOW, this 13th day of December, 2001, upon consideration of the attached Petition to Join an Additional Defendant, a Rule is hereby issued upon Plaintiff and Sweetland Engineering & Associates, Inc. to Show Cause why the Petition to Join an Additional Defendant should not be granted. Rule Returnable for written response on the 2nd of January, 2002.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION, YOU MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Market Street
Clearfield, PA 16830
(814) 765-2641

BY THE COURT,

Judge

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED 2 cc Atty Naddeo
01:10 BGR
DEC 13 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.,
Plaintiff,

v.

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,
Defendant.

No. 01-1265-CD

Type of Pleading:

Certificate of Service

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

DEC 14 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Petition to Join an Additional Defendant and Amended Rule to Petition to Join Additional Defendant filed in the above-captioned action was served on the following person and in the following manner on the 14th day of December, 2001:

First-Class Mail, Postage Prepaid

Kevin J. McKeon, Esquire
Fluke, Weiers & Schmitt, P.C.
1400 The Bank Tower
Pittsburgh, PA 15222

Sweetland Engineering & Associates, Inc.
600 Science Park Road
State College, PA 16803

James A. Naddeo
James A. Naddeo
Attorney for Defendant

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Fap over margin

FILED

DEC 14 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.

Plaintiff,

vs.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant.

CIVIL DIVISION

NO. 01-1265-CD

RESPONSE TO RULE FOR PETITION TO JOIN ADDITIONAL DEFENDANT

Filed on behalf of Sweetland Engineering & Associates, Inc., Additional Defendant

Counsel of Record for this Party:

Francis X. McTiernan, Jr., Esq.
Pa. ID 43587

WAYMAN, IRVIN & McAULEY
Firm # 583
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219

(412) 566-2970

FILED

DEC 31 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC. CIVIL DIVISION

Plaintiff, NO. 01-1265-CD

vs.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant.

RESPONSE TO RULE FOR PETITION TO JOIN AN ADDITIONAL DEFENDANT

AND NOW, comes the proposed Additional Defendant, Sweetland Engineering & Associates, Inc., by and through its counsel, Wayman, Irvin & McAuley and files the within Response to Rule for Petition to Join an Additional Defendant and in support thereof avers the following:

1. The within action arises out of the construction of a sanitary sewer system by the plaintiff, Continental Construction, Inc., for the Wallaceton-Boggs Municipal Authority pursuant to a contract dated June 21, 2000.

2. During the course of construction, various disputes arose between the contractor and the Authority for which the contractor now seeks to recover.

3. These include claims for extra costs incurred as a result of problems during construction as well as time extensions to the subject contract.

4. The Municipal Authority has filed a response to this Complaint and has included a counterclaim against the contractor.

5. The Municipal Authority now seeks to add as an additional defendant Sweetland Engineering & Associates, Inc. Sweetland acted as the engineer for the subject project pursuant to an agreement with the Municipal Authority dated November 12, 1998.

6. The agreement which Sweetland had with the Authority contains a dispute resolution provision requiring that any disputes between the Municipal Authority and Sweetland be first submitted to mediation and if an agreement cannot be reached, pursuant to the construction industry arbitration rules, that the dispute must then be submitted to the American Arbitration Association.(A copy of the relevant portions of the agreement is attached to the Brief as Exhibit "A").

7. The proposed additional defendant, Sweetland Engineering & Associates, request that this Court enforce the agreement of the parties and require that the Municipal Authority bring any claims which it may have against Sweetland Engineering to mediation and then to the American Arbitration Association.

8. The Courts of this Commonwealth have consistently held that when parties in their contracts provide that disputes be determined by arbitration, that the court will give full force and effect to these agreements.

9. When a party to a contract which contains an arbitration provision seeks to avoid this provision, the court will determine (1) whether a valid agreement to arbitrate exists and (2) whether the dispute is within the scope of the arbitration provision.

10. It is undisputed that an agreement to arbitrate does exist in the contract between Sweetland and the Municipal Authority and that the dispute currently at issue arises out of this agreement.

11. The parties when entering into the agreement choose to submit disputes to the American Arbitration Association in order that the disputes will be heard by arbitrators who are familiar with

construction. Therefore, to allow the Municipal Authority to avoid this agreement would severely prejudice Sweetland Engineers.

12. Sweetland therefore requests that this Court enforce the agreement which the parties have freely entered into and deny the Petition to Join Sweetland as an additional defendant.

WHEREFORE, this proposed additional defendant, Sweetland Engineering & Associates, Inc., respectfully request that this Honorable Court deny the Petition brought by Wallaceton-Boggs Municipal Authority to join Sweetland as an additional defendant.

Respectfully submitted,

WAYMAN, IRVIN & McAULEY

BY: _____

Francis X. McTiernan, Jr., Esquire
Attorney for Sweetland Engineers & Associates, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Response to Petition to Join Additional Defendant was mailed by First Class Mail, postage prepaid to all counsel of record on the 27th day of December, 2001 as follows:

James Naddeo, Esq.
211 ½ East Locust Street
Marino Building
P.O Box 552
Clearfield, PA 16830

Kevin McKeon, Esq.
1400 The Bank Tower
Pittsburgh, PA 15222

Wayman, Irvin & McAuley

By: _____
Francis X. McTiernan, Jr., Esq.

FILED

DEC 31 2001

10/1:51 noCC

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant.

ANSWER TO PETITION TO JOIN ADDITIONAL DEFENDANT

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon, Esquire
Pa. I.D. #76232

FLUKE, WEIERS & SCHMITT, P.C.
Firm I.D. #029

1400 The Bank Tower
Pittsburgh, PA 15222
(412) 261-3800

JURY TRIAL DEMANDED

FILED

JAN 02 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 01-1265-CD
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
Defendant.	)	

ANSWER TO PETITION TO JOIN ADDITIONAL DEFENDANT

AND NOW, comes the Plaintiff, Continental Construction, Inc., by and through its attorneys, Fluke, Weiers & Schmitt, P.C., and Kevin J. McKeon, Esquire, and files the following Answer to Petition to Join Additional Defendant, Wallaceton-Boggs Municipal Authority (hereinafter "Petitioner"), and in support thereof alleges as follows:

1. The averments set forth in Paragraph 1 of the Petition are Admitted.

2. The averments set forth in Paragraph 2 of the Petition are Denied to the extent that Petitioner implies that service was merely "attempted." By way of further response, and in accordance with the Clearfield County Sheriff's Return of Service filed with this Honorable Court, a copy of which is attached hereto under Exhibit A, service upon Petitioner/Defendant was accomplished and complete on August 28, 2001 at the admitted principal place of business of Petitioner. (See Petitioner's Answer to Complaint at ¶2, admitting Plaintiff's allegation that Petitioner's principal place of business is the address upon which the Sheriff accomplished service).

that Mr. Test believed that service was improper. However, it is Denied that Plaintiff had "failed to effect proper service" for the reasons set forth in Paragraph 2 above, and to the contrary, service was accomplished and completed on Petitioner on August 28, 2001.

4. The averments set forth in Paragraph 4 of the Petition are Admitted In Part and Denied In Part. It is admitted that Plaintiff's counsel and Petitioner's counsel reached an agreement regarding the time for filing of Petitioner's Answer. However, it is Denied that Petitioner merely agreed to "refrain from filing an objection to service," as Petitioner agreed not file any Preliminary Objections.

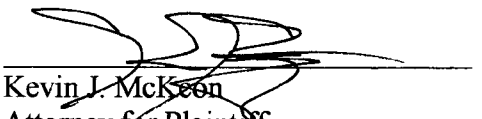
5. The averments set forth in Paragraph 5 of the Petition are Admitted.

6. The averments set forth in Paragraph 6 of the Petition are Admitted.

7. The averments set forth in Paragraph 7 of the Petition are Admitted.

8. The averments set forth in Paragraph 5 of the Petition are Admitted.

Respectfully Submitted,



Kevin J. McKeon
Attorney for Plaintiff,
Continental Construction, Inc.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11422

CONTINENTAL CONSTRUCTION, INC. 01-1265-CD

VS.

WALLACETON-BOGGS MUNICIPAL AUTHORITY

COPY

COMPLAINT AND EXHIBIT A TO COMPLAINT

SHERIFF RETURNS

NOW AUGUST 28, 2001 AT 10:40 AM DST SERVED THE WITHIN COMPLAINT IN CIVIL ACTION/EXHIBIT A TO COMPLAINT ON WALLACETON-BOGGS MUNICIPAL AUTHORITY, DEFENDANT AT EMPLOYMENT, BOGGS TOWNSHIP BLDG., WEST DECATUR, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO GARY STRAW, SUP., PIC, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN CIVIL ACTION/EXHIBIT A TO COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
25.49	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

____ Day Of _____ 2001

_____

So Answers,

Chester A. Hawkins
Sheriff

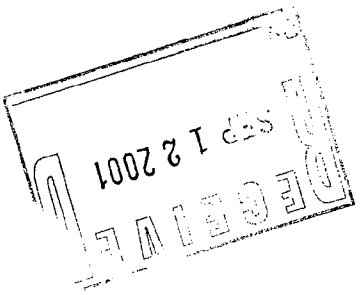


EXHIBIT
A

8578

DEPUTY SHERIFF'S EDUCATION & TRAINING ACCT.

COURT No. 01-1265-CD

DATE Aug 27 2001

RECEIVED OF Centennial $ 10.00

Vs. Wellacetor

COMPLAINT ✓

SUMMONS ____

EXECUTION ____

PETITIONS ____

OTHER ____

PAID Bldg Ck # 1017

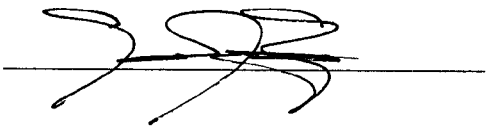
AUG 27 2001

M. Hawkins

CHESTER A. HAWKINS, SHERIFF
CLEARFIELD COUNTY, PENNSYLVANIA

VERIFICATION

I, Kevin J. McKeon, verify that the statements made in the foregoing Answer to Petition to Join Additional Defendant are true and correct to the best of my knowledge, information and belief, obtained through discussions with representatives of my client, Continental Construction, Inc. These statements are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



CERTIFICATE OF SERVICE

I, Kevin J. McKeon, do hereby certify that a true and correct copy of the foregoing Answer to Petition to Join Additional Defendant filed in the above-captioned action was served upon the following on the 18th day of December, 2001, via U.S. Mail, postage paid:

James A. Naddeo, Esquire
211 1/2 Box 552
Clearfield, PA 16830
(814) 765-1601

Francis X. McTiernan, Jr., Esquire
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219

Kevin J. McKeon

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant.

AMENDED ANSWER TO PETITION TO JOIN ADDITIONAL DEFENDANT

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon
Pa. I.D. #76232

FLUKE, WEIERS & McKEON, P.C.
Firm I.D. #029

1400 The Bank Tower
Pittsburgh, PA 15222
(412) 261-3800

JURY TRIAL DEMANDED

FILED

APR 05 2002
01:00 lw
William A. Shaw
Prothonotary
2 cert to Atty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 01-1265-CD
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
Defendant.	)	

AMENDED ANSWER TO PETITION TO JOIN ADDITIONAL DEFENDANT

AND NOW, comes the Plaintiff, Continental Construction, Inc., by and through its undersigned counsel and files the following Amended Answer to Petition to Join Additional Defendant, and in support thereof states as follows:

1. The averments set forth in Paragraph 1 of the Petition are Admitted.

2. The averments set forth in Paragraph 2 of the Petition are Denied to the extent that Petitioner implies that service was merely "attempted." By way of further response, and in accordance with the Clearfield County Sheriff's Return of Service filed with this Honorable Court, a copy of which is attached hereto under Exhibit A, service upon Petitioner/Defendant was accomplished and complete on August 28, 2001 at the admitted principal place of business of Petitioner. (See Petitioner's Answer to Complaint at ¶2, admitting Plaintiff's allegation that Petitioner's principal place of business is the address upon which the Sheriff accomplished service).

3. The averments set forth in Paragraph 3 of the Petition are Admitted In Part and Denied In Part. It is Admitted that George Test, Esquire informed Plaintiff's counsel

that Mr. Test believed that service was improper. However, it is Denied that Plaintiff had "failed to effect proper service" for the reasons set forth in Paragraph 2 above, and to the contrary, service was accomplished and completed on Petitioner on August 28, 2001.

4. The averments set forth in Paragraph 4 of the Petition are Admitted In Part and Denied In Part. It is admitted that Plaintiff's counsel and Petitioner's counsel reached an agreement regarding the time for filing of Petitioner's Answer. However, it is Denied that Petitioner merely agreed to "refrain from filing an objection to service," as Petitioner agreed not file any Preliminary Objections.

5. The averments set forth in Paragraph 5 of the Petition are Admitted.

6. The averments set forth in Paragraph 6 of the Petition are Admitted.

7. The averments set forth in Paragraph 7 of the Petition are Admitted.

8. The averments set forth in Paragraph 8 of the Petition are Admitted.

Respectfully Submitted,

Kevin J. McKeon
Attorney for Plaintiff,
Continental Construction, Inc.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11422

CONTINENTAL CONSTRUCTION, INC.

01-1265-CD

VS.

WALLACETON-BOGGS MUNICIPAL AUTHORITY

COPY

COMPLAINT AND EXHIBIT A TO COMPLAINT

SHERIFF RETURNS

NOW AUGUST 28, 2001 AT 10:40 AM DST SERVED THE WITHIN COMPLAINT IN CIVIL ACTION/EXHIBIT A TO COMPLAINT ON WALLACETON-BOGGS MUNICIPAL AUTHORITY, DEFENDANT AT EMPLOYMENT, BOGGS TOWNSHIP BLDG., WEST DECATUR, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO GARY STRAW, SUP., PIC, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN CIVIL ACTION/EXHIBIT A TO COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
25.49	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

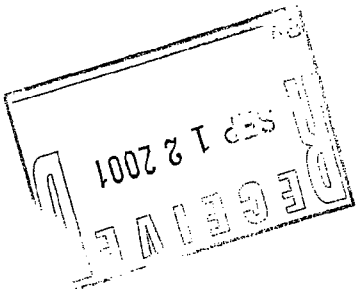
Sworn to Before Me This

____ Day Of _____ 2001

_____

So Answers,

Chester A. Hawkins
Sheriff



EXHIBIT

A

8578

DEPUTY SHERIFF'S EDUCATION & TRAINING ACCT.

COURT No. 01-1265-CJ

DATE Aug 27 200 1

RECEIVED OF Contented $ 10.00

Vs. Wheelerton

COMPLAINT ✓

SUMMONS ____

EXECUTION ____

PETITIONS ____

OTHER ____

PAID Bldg # 1017

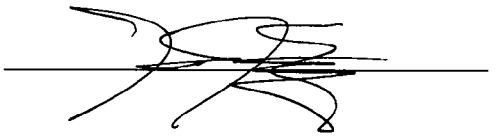
AUG 27 2001

M. Hamm

CHESTER A. HAWKINS, SHERIFF
CLEARFIELD COUNTY, PENNSYLVANIA

VERIFICATION

I, Kevin J. McKeon, verify that the statements made in the foregoing Answer to Petition to Join Additional Defendant are true and correct to the best of my knowledge, information and belief, obtained through discussions with representatives of my client, Continental Construction, Inc. These statements are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

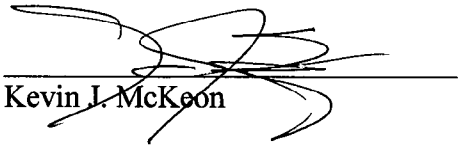


CERTIFICATE OF SERVICE

I, Kevin J. McKeon, do hereby certify that a true and correct copy of the foregoing Amended Answer to Petition to Join Additional Defendant filed in the above-captioned action was served upon the following on the 5th day of April, 2002, via Hand-Delivery:

James A. Naddeo, Esquire
211 1/2 Box 552
Clearfield, PA 16830

Francis X. McTiernan, Jr., Esquire
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219



Kevin J. McKeon

ROLF E. KROLL, ESQUIRE
Pa. Supreme Court I.D. No. 47243
MARGOLIS EDELSTEIN
Post Office Box 932
Harrisburg, Pennsylvania 17108-0932

Telephone: [717] 975-8114
Fax: [717] 975-8124
E-mail: rkroll@margolisedelstein.com

Attorney for:
Defendants, Wallaceton-Boggs Municipal Authority

CONTINENTAL CONSTRUCTION, INC., Plaintiff v. WALLACETON-BOGGS MUNCIPAL AUTHORITY, Defendant	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA NO. 01-1265-CD CIVIL ACTION – LAW

PRAECIPE TO ENTER APPEARANCE

Kindly enter my appearance on behalf of Defendant, Wallaceton-Boggs Municipal Authority, in the above-captioned matter.

MARGOLIS EDELSTEIN

DATE: 4/26/02 By: _____
ROLF E. KROLL, ESQUIRE
Attorney I.D. No. 47243

DATE: 4/26/02 By: _____
SHAUN J. MUMFORD, ESQUIRE
Attorney I.D. No. 84176

FILED

APR 29 2002
m/1.40/1cc atty Mumford
William A. Shaw
Prothonotary
Copy CA & RR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing PRAECIPE TO ENTER APPEARANCE on all counsel of record by placing the same in the United States mail at Camp Hill, Pennsylvania, first-class postage prepaid, on the 26th day of April, 2002, and addressed as follows:

George S. Test, Esquire
Solicitor - Wallaceton-Boggs Municipal Authority
P.O. Box 706
Philipsburg, PA 16866

James A. Naddeo, Esquire
211 ½ East Locust Street
P.O. Box 552
Clearfield, PA 16830

Kevin J. McKeon, Esquire
FLUKE, WEIERS & SCHMITT, P.C.
1400 The Bank Tower
Pittsburgh, PA 15222

Tracy Gardner
Sweetland Engineering & Associates, Inc.
600 Science Park Road
State College, PA 16803

MARGOLIS EDELSTEIN

By: Diane Portzline
Diane L. Portzline, Secretary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CONTINENTAL CONSTRUCTION, INC.	:	
	:	
-vs-	:	No. 01 – 1265 – CD
	:	
WALLACETON-BOGGS MUNICIPAL AUTHORITY	:	

OPINION AND ORDER

On November 12, 1998, Wallaceton-Boggs Municipal Authority (Authority) and Sweetland Engineering & Associates, Inc. (Engineer) entered into a contract under the terms of which Engineer was to design and oversee the installation of a sewage collection and treatment system for Authority. Thereafter, on June 21, 2000, Continental Construction, Inc. (Continental), the low bidder, entered into a contract for the construction of said sewer system. A dispute arose between Continental and Authority and Continental has instituted the above-captioned action alleging breach of contract by Defendant Authority. Authority has filed a Petition to Join Sweetland as an additional defendant alleging that Sweetland's conduct as project engineer makes them solely liable, liable over to Authority, or jointly and severally liable with Authority for the damages claimed by Continental. In its response to the Petition to Join, Sweetland pleads the following provisions of its contract with Authority:

Paragraph G8.6.1 which provides in pertinent part:

> Owner and Engineer 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 this agreement or the breach thereof {disputes} to mediation by a mutually agreed upon mediator prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs G8.6.2 through G8.6.8, unless delay in initiating arbitration would irrevocably prejudice one of the parties.

The agreement further provides in Paragraph G8.6.2:

FILED
APR 29 2002
William A. Shaw
Prothonotary

> All disputes between Owner and Engineer not resolved under Paragraph G8.6.1 will be decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in Paragraphs G8.6.4 and G8.6.5 below.
>
> This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Paragraph G8.6 will be specifically enforceable under the prevailing law of any court having jurisdiction.

Based on the above, Sweetland argues that any claims Authority may have against Sweetland must be submitted to mediation and/or arbitration as set forth above and therefore, Sweetland claims it cannot be joined as an additional defendant in the instant suit.

This Court disagrees and does herein grant Authority's Petition to Join Sweetland as additional Defendant.

Clearly, according to the above provisions in the contract between Authority and Sweetland, a process for mediation and arbitration is established as a means of resolving disputes between the two parties. This Court, however, specifically notes that paragraph G8.6.1 mandates mediation for "unsettled claims, counterclaims, disputes and other matters in question between them, arising out of or relating to this agreement or the breach thereof..." The above action does not involve an unsettled claim or counterclaim between Authority and Sweetland. Here the dispute is between Continental and Authority. The Authority is not seeking monetary damages from Sweetland and since no dispute has been filed of record in which Authority, as Plaintiff, seeks to recover damages from Sweetland as Defendant, Authority is apparently satisfied with Sweetland's services under the agreement of November 12, 1998. Authority, in petitioning to join Sweetland, seeks only to insulate itself from some degree of liability. The contract between Authority and Sweetland only addresses disputes

between those two as parties to the contract and here the complaint was not instituted by the Authority but by Continental. As set forth above, there would have been no dispute between Plaintiff and Sweetland had it not been for Continental's complaint against Authority.

The Authority's Petition to Join Sweetland does not involve an issue "arising out of or relating to" the contract between the two. Continental, in fact, is suing the Authority based on an alleged breach of the construction contract of June 21, 2000, and therefore, the above quoted portion of the November 12, 1998, agreement between Authority and Engineer does not apply.

Authority also argues that they are permitted to join Engineer under the provisions of Pennsylvania Rules of Civil Procedure 2252(a) which should be broadly construed for the purposes of avoiding multiple law suits. To permit the joinder of Sweetland in the instant case would accomplish this result as it would eliminate the necessity for a future proceeding between Authority and Sweetland in the event Continental is successful in the instant action.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 29th day of April, 2002, upon consideration of Wallaceton-Boggs Municipal Authority's Petition to Join Sweetland Engineering & Associates, Inc. as an additional defendant in the above-captioned matter, and argument and briefs thereon, and in

accordance with the foregoing Opinion, it is the ORDER of this Court that said Petition be and is hereby granted.

By the Court,

President Judge

FILED
01/3:34 BK
APR 29 2002

William A. Shaw
Prothonotary

1 cc S. Mikesell
1 cc Kevin McKeon
1 cc Rolf Kroll
1 cc Shawn Mumford

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.,
Plaintiff,

v.

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,
Defendant.

No. 01-1265-CD

Type of Pleading:

PRAECIPE TO WITHDRAW APPEARANCE

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

MAY 07 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant.	*	

PRAECIPE TO WITHDRAW AS COUNSEL

To The Prothonotary:

Please withdraw my appearance on behalf of the Defendant, Wallaceton-Boggs Municipal Authority, in the above-captioned matter.

James A. Naddeo

James A. Naddeo, Esquire

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED
01/10:43 BA
MAY 07 2002
NO CC

William A. Shaw
Prothonotary

CONTINENTAL CONSTRUCTION, INC., Plaintiff v. WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant v. SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant	IN THE COURT OF COMMON PLEAS CLEARFIELD CO., PENNSYLVANIA NO. 01-1265-CD CIVIL ACTION – LAW

PRAECIPE FOR WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT

TO THE PROTHONOTARY OF SAID COURT:

Please issue Writ of Summons in the above-captioned action.

X Writ of Summons shall be issued and forwarded to: Sweetland Engineering
& Associates, Inc.
600 Science Park Road
State College, PA 16803

Date: 5/15/02 By: _____

ROLF E. KROLL, ESQUIRE
Attorney I.D. No. 47243
MARGOLIS EDELSTEIN
P.O. Box 932
Harrisburg, PA 17108
(717) 975-8114

Attorneys for Defendant
Wallaceton-Boggs Municipal Authority

FILED
MAY 16 2002
m/12:20/ wgs
William A. Shaw
Prothonotary
2 cert w/writ to Sheriff
&
1 cert w/writ to Atty

TO: SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant

YOU ARE NOTIFIED THAT DEFENDANT, WALLACETON-BOGGS MUNICIPAL AUTHORITY, HAS JOINED YOU AS AN ADDITIONAL DEFENDANT IN THIS ACTION, WHICH YOU ARE REQUIRED TO DEFEND.

Date: May 16, 2002

Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

By: _____
~~Deputy~~

INSTRUCTIONS TO THE SHERIFF

Kindly serve a copy of the Writ upon the Additional Defendant by deputized service via Sheriff at the following address:

Sweetland Engineering & Associates, Inc.
600 Science Park Raod
State College, PA 16803

Date: 5/15/02

By: _____

ROLF E. KROLL, ESQUIRE
MARGOLIS EDELSTEIN
P.O. Box 932
Harrisburg, PA 17108
(717) 975-8114

Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

Continental Construction;
Plaintiff(s)

Vs.

Wallaceton-Boggs Municipal Authority; 2001-01265-CD
Defendant(s)

Vs.

Sweetland Engineering & Associates, Inc.
Additional Defendant(s)

To: Sweetland Engineering & Associates, Inc.

You are notified that Wallaceton-Boggs Municipal Authority has joined you as an additional defendant in this action, which you are required to defend.

Dated: May 16, 2002

_____
Prothonotary

Filing Attorney: Rolf E. Kroll, Esq.
MARGOLIS EDELSTEIN
P. O. Box 932
Harrisburg, PA 17108

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12536

CONTINENTAL CONSTRUCTION 01-1265-CD

VS.

WALLACETON-BOGGS MUNICIPAL AUTHORITY-vs- SWEETLAND ENGINE

PRAECIPE & WRIT TO JOIN ADDITIONAL DEFENDANT

SHERIFF RETURNS

NOW MAY 23, 2002, DENNY NAU, SHERIFF OF CENTRE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN PRAECIPE & WRIT TO JOIN ADDITIONAL DEFENDANT ON SWEETLAND ENGINEERING & ASSOC., DEFENDANT.

NOW JUNE 3, 2002 SERVED THE WITHIN PRAECIPE & WRIT TO JOIN ADDITIONAL DEFENDANT ON SWEETLAND ENGINEERNIG & ASSOC., DEFENDANT BY DEPUTIZING THE SHERIFF OF CENTRE COUNTY. THE RETURN OF SHERIFF NAU IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED CHRISTINA FETZER, CHIEF FINNANCIAL OFFICER.

Return Costs

Cost	Description
28.02	SHFF. HAWKINS PAID BY: ATTY.
32.00	SHFF. NAU PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

FILED

AUG 0 7 2002

William A. Shaw
Prothonotary

Sworn to Before Me This

7th Day Of Aug. 2002

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
Sheriff

#854
12536

SHERIFF'S OFFICE
CENTRE COUNTY
Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

SHERIFF SERVICE
PROCESS RECEIPT, AND AFFIDAVIT OF RETURN

INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. please type or print legibly. Do Not detach any copies.

1. Plaintiff(s): Continental Construction Inc.

2. Case Number: 01-1265-CD

3. Defendant(s): Sweetland Engineering & Assoc.

4. Type of Writ or Complaint: PRAECIPE & WRIT TO JOIN Additional Def.

SERVE → AT

5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold.: Sweetland Engineering & Assoc.

6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code): 600 Science Park Rd., State College, PA. 16803

7. Indicate unusual service: ☐ Reg Mail ☐ Certified Mail ☐ Deputize ☐ Post ☐ Other

Now, _____ 20_____. I SHERIFF OF CENTRE COUNTY, PA., do hereby deputize the Sheriff of _____ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____
Sheriff of Centre County

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN – Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

9. Print/Type Name and Address of Attorney/Originator

10. Telephone Number

11. Date

12. Signature

SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above. SIGNATURE of Authorized CCSD Deputy of Clerk and Title

14. Date Filed

15. Expiration/Hearing Date

TO BE COMPLETED BY SHERIFF

16. Served and made known to Christina Fetzer, on the 3 day of June, 20 02, at 9:35 o'clock, A m., at SAME AS ABOVE ADDRESS, County of Centre Commonwealth of Pennsylvania, in the manner described below:

- ☐ Defendant(s) personally served.
- ☐ Adult family member with whom said Defendant(s) resides(s). Relationship is _____
- ☐ Adult in charge of Defendant's residence.
- ☐ Manager/Clerk of place of lodging in which Defendant(s) resides(s).
- ☐ Agent or person in charge of Defendant's office or usual place of business.
- ☐ _____ and officer of said Defendant company.
- ☒ Other Chief Financial officer

On the _____ day of _____, 20_____, at _____ o'clock, _____ M.

Defendant not found because:

☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other _____

Remarks:

Advance Costs	Docket	Service	Sur Charge	Affidavit	Mileage	Postage	Misc.	Total Costs	~~Costs Due~~ or Refund
75.00	9.00	9.00	—	2.50	9.00	.50	2.00	32.00	43.00

17. AFFIRMED and subscribed to before me this 6 day of June 20 02

23. Corinne Peters
Notary Public

Notarial Seal
Corinne Peters, Notary Public
Bellefonte Boro, Centre County
My Commission Expires Sept. 5, 2005
Member, Pennsylvania Association of Notaries

My Commission Expires

So Answer.

18. Signature of Dep. Sheriff

19. Date 6-4-02

21. Signature of Sheriff

22. Date

SHERIFF OF CENTRE COUNTY

Amount Pd. Page

24. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED AUTHORITY AND TITLE

25. Date Received

White - Prothonotary Canary - Attorney

#954

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-5915

Sheriff's Office
Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

CHESTER A. HAWKINS
SHERIFF

DARLENE SHULTZ
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

MARGARET PUTT
OFFICE MANAGER

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION INC
vs
WALLACETON-BOGGS MUNICIPAL AUTHORITY
vs
SWEETLAND ENGINEERING & ASSOCIATES INC.

TERM & NO. 01-1265-CD

SERVE BY: 6/15/02

DOCUMENT TO BE SERVED:
PREACIPE & WRIT TO JOIN ADDL. DEFT.

MAKE REFUND PAYABLE TO: MARGOLIS, EDELSTEIN

SERVE: SWEETLAND ENGINEERING & ASSOCIATES INC., Addl. Deft.

ADDRESS: 600 Science Park Road, State College, Pa. 16803

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF CENTRE COUNTY Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 23rd Day of May 2002.

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

PG. 3034-AA
fd. 75.00

COPY

CONTINENTAL CONSTRUCTION, INC., Plaintiff v. WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant v. SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant	IN THE COURT OF COMMON PLEAS CLEARFIELD CO., PENNSYLVANIA NO. 01-1265-CD CIVIL ACTION – LAW

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAY 16 2002

Attest.

Prothonotary/
Clerk of Courts

PRAECIPE FOR WRIT OF SUMMONS TO JOIN ADDITIONAL DEFENDANT

TO THE PROTHONOTARY OF SAID COURT:

Please issue Writ of Summons in the above-captioned action.

X Writ of Summons shall be issued and forwarded to: Sweetland Engineering
& Associates, Inc.
600 Science Park Road
State College, PA 16803

Date: 5/15/02 By: _____

ROLF E. KROLL, ESQUIRE
Attorney I.D. No. 47243
MARGOLIS EDELSTEIN
P.O. Box 932
Harrisburg, PA 17108
(717) 975-8114

Attorneys for Defendant
Wallaceton-Boggs Municipal Authority

TO: SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant

YOU ARE NOTIFIED THAT DEFENDANT, WALLACETON-BOGGS MUNICIPAL AUTHORITY, HAS JOINED YOU AS AN ADDITIONAL DEFENDANT IN THIS ACTION, WHICH YOU ARE REQUIRED TO DEFEND.

Date: MAY 16, 2002

Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

By: _____
~~Deputy~~

INSTRUCTIONS TO THE SHERIFF

Kindly serve a copy of the Writ upon the Additional Defendant by deputized service via Sheriff at the following address:

Sweetland Engineering & Associates, Inc.
600 Science Park Raod
State College, PA 16803

Date: 5/15/02 By: _____

ROLF E. KROLL, ESQUIRE
MARGOLIS EDELSTEIN
P.O. Box 932
Harrisburg, PA 17108
(717) 975-8114

Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WRIT TO JOIN ADDITIONAL DEFENDANT

Continental Construction;
Plaintiff(s)

Vs.

Wallaceton-Boggs Municipal Authority;
Defendant(s)

2001-01265-CD

Vs.

Sweetland Engineering & Associates, Inc.
Additional Defendant(s)

To: Sweetland Engineering & Associates, Inc.

You are notified that Wallaceton-Boggs Municipal Authority has joined you as an additional defendant in this action, which you are required to defend.

Dated: May 16, 2002

Prothonotary

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

Filing Attorney: Rolf E. Kroll, Esq.
MARGOLIS EDELSTEIN
P. O. Box 932
Harrisburg, PA 17108

INSTRUCTIONS TO THE SHERIFF

Kindly serve a copy of the Writ upon the Additional Defendant by deputized service via Sheriff at the following address:

Sweetland Engineering & Associates, Inc.
600 Science Park Raod
State College, PA 16803

Date: 5/15/02

By: _____

ROLF E. KROLL, ESQUIRE
MARGOLIS EDELSTEIN
P.O. Box 932
Harrisburg, PA 17108
(717) 975-8114

Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PRAECIPE TO WITHDRAW/ENTER APPEARANCE

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon
Pa. I.D. #76232

WATT, TIEDER, HOFFAR &
FITZGERALD, LLP

7929 Westpark Drive, Suite 400
McLean, VA 22102
(703) 749-1000

JURY TRIAL DEMANDED

FILED

OCT 04 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PRAECIPE TO WITHDRAW/ENTER APPEARANCE

TO THE PROTHONOTARY:

Kindly withdraw the appearance of :

Kevin J. McKeon
Fluke, Weiers, & McKeon, P.C.
1400 The Bank Tower
Pittsburgh, PA 15222

and enter the appearance of :

Kevin J. McKeon
Watt, Tieder, Hoffar & Fitzgerald, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102
703-749-1000 (telephone)
703-893-8029 (fax)
kmckeon@wthf.com

in the above-captioned matter.

Respectfully submitted,

Kevin J. McKeon
Watt, Tieder, Hoffar & Fitzgerald, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102

CERTIFICATE OF SERVICE

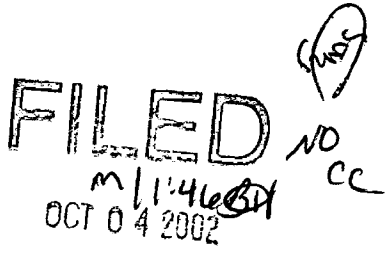
I, Kevin J. McKeon, do hereby certify that a true and correct copy of the foregoing Praecipe to Withdraw/Enter Appearance filed in the above-captioned action was served upon the following on the 30th day of September, 2002, via U.S. Mail:

Rolf E. Kroll, Esq.
Shaun J. Mumford, Esq.
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Wallaceton-Boggs Municipal Authority

James A. Naddeo, Esquire
211 ½ Box 552
Clearfield, PA 16830
Attorney for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Attorney for Sweetland Engineering & Associates, Inc.

Kevin J. McKeon



William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PROOF OF SERVICE OF DISCOVERY REQUESTS

Filed on behalf of:
CONTINENTAL
CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon
Pa. I.D. #76232

WATT, TIEDER, HOFFAR &
FITZGERALD, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102
(703) 749-1000

FILED
JAN 23 2003
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PROOF OF SERVICE OF DISCOVERY REQUESTS

I, Kevin J. McKeon, hereby certify that a true and correct copy of the Plaintiff's Requests for Admissions, Documents and Interrogatories directed to Defendant, Set I, was served upon the following on the 21st day of January, 2003, via U.S. Mail:

Rolf E. Kroll, Esq.
Shaun J. Mumford, Esq.
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Wallaceton-Boggs Municipal Authority

James A. Naddeo, Esquire
211 ½ Box 552
Clearfield, PA 16830
Attorney for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Attorney for Sweetland Engineering & Associates, Inc.

Kevin J. McKeon

CERTIFICATE OF SERVICE

I, Kevin J. McKeon, hereby certify that a true and correct copy of the foregoing Proof of Service of Discovery Requests was served upon the following on the 21st day of January, 2003, via U.S. Mail:

Rolf E. Kroll, Esq.
Shaun J. Mumford, Esq.
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Wallaceton-Boggs Municipal Authority

James A. Naddeo, Esquire
211 ½ Box 552
Clearfield, PA 16830
Attorney for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Attorney for Sweetland Engineering & Associates, Inc.

Kevin J. McKeon

FILED

MAR 0 5 2003

William A. Shaw
Prothonotary

ROLF E. KROLL. ESQUIRE
Pa. Supreme Court I.D. No. 47243
SHAUN J. MUMFORD, ESQUIRE
Pa. Supreme Court I.D. No. 84176
MARGOLIS EDELSTEIN
P.O. BOX 932
HARRISBURG, PA 17108-0932

Telephone: (717) 975-8114
Fax: (717) 975-8124
E-mail: rkroll@margolisedelstein.com

Attorneys for:
DEFENDANT

CONTINENTAL CONSTRUCTION, INC., Plaintiff	:	IN THE COURT OF COMMON PLEAS OF CLEARFILED COUNTY, PENNSYLVANIA
v.	:	CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	:	NO. 01-1265-CD JURY TRIAL DEMANDED
v.	:	
SWEETLAND ENGINEERING, Additional Defendant	:	

RESPONSES OF DEFENDANT TO PLAINTIFF'S REQUESTS FOR ADMISSIONS, DOCUMENTS AND INTERROGATORIES - SET I

REQUEST NO. 1.(RFA): You did not obtain all easements necessary for construction of the Project prior to the date that CCI was provided Notice to Proceed with construction of the Project.

Admitted: **Denied: XXX**

REQUEST NO. 2. (INT): Identify: (a) all easements you obtained to allow for construction of the Project, and (b) the dates upon which each easement was obtained.

Answer: Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location.

REQUEST NO. 3. (RFD): Produce any documents constituting easement or right-of-way agreements you obtained to allow for construction of the Project.

Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location.

REQUEST NO. 3 (RFA): **(SIC)** The Project was substantially complete as of April 18, 2001.

Admitted: **Denied: XXX**

REQUEST NO.4 (INT): To the extent that you response to the previous Request is anything other than an unqualified admission, identify the date upon which the Project was substantially complete.

Answer: Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location. By way of further response, Defendant contends that the Project was discontinued due to Plaintiff's material failure to perform all of the work necessary for Project completion.

REQUEST NO. 5 (RFA): CCI has completed each and every item of work set forth in the Engineer's attachment to the Certificate of Substantial Completion issued on or about April 23, 2001, titled "Cost Estimate for Project Completion."

Admitted: **Denied: XXX**

REQUEST NO. 6 (INT): To the extent your response to the previous Request is anything other than an unqualified admission:

(a) identify each and every item of work set forth in the Engineer's attachment to the Certificate of Substantial Completion issued on or about April 23, 2001, titled "Cost Estimate for Project Completion," that remains incomplete and/or defective;

(b) identify any other items of work that you claim are incomplete and/or defective; and

(c) identify the dollar amount, if any, presently being withheld for each such incomplete and/or defective item.

Answer: Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location. By way of further response, Defendant contends that the Project was discontinued due to Plaintiff's material failure to perform all of the work necessary for Project completion.

REQUEST NO. 7 (RFD): For any items of incomplete and/or defective work identified in answer to subparts (a) or (b), respectively, of the previous Request, produce any invoices, notes, estimates or other documents supporting calculation of the dollar amounts identified in answer to subpart (c).

Answer: Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location. By way of further response, Defendant contends that the Project was discontinued due to Plaintiff's material failure to perform all of the work necessary for Project completion.

REQUEST NO. 8 (RFA): CCI repeatedly requested that you and the Engineer conduct a final inspection of the Project

Admitted: **Denied: XXX**

REQUEST NO. 9 (RFA): Neither you nor the Engineer has conducted a final inspection of the Project pursuant to Article 14.06 of the General Conditions of the Contract.

Objection. This Request for Admission is unreasonable, vague and not subject to ready admission or denial because material work on the Project remained outstanding and/or was performed in an unsatisfactory manner. Material completion of the Project work in a satisfactory manner is a necessary precondition to a final inspection. Without waiving the forgoing objection, denied.

REQUEST NO. 10. (INT): To the extent your response to the previous Request is anything other than an unqualified admission, identify: (a) the date upon which the final inspection took place, and (b) all persons who participated in such final inspection.

Answer: Defendant contends that the Project was discontinued due to Plaintiff's material failure to perform all of the work necessary for Project completion.

REQUEST NO. 11. (RFD): Produce any notes, lists or reports generated during or as a result of the final inspection, if any, which took place on the date identified in answer to the previous Request.

Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location. By way of further response, Defendant contends that the Project was discontinued due to Plaintiff's material failure to perform all of the work necessary for Project completion.

REQUEST NO. 12 (RFA): Other than the Engineer's attachment to the Certificate of Substantial Completion issued on or about April 23, 2001, titled "Cost Estimate for Project Completion", neither you nor the Engineer ever issued a punch list or other document identifying items of incomplete or defective work after substantial completion.

Admitted: **Denied: XXX**

REQUEST NO. 13. (RFD): To the extent your response to the previous Request is anything other than an unqualified admission, produce the punch list or other document identifying items of incomplete or defective work issued after substantial completion.

Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location. By way of further response, Defendant contends that the Project was discontinued due to Plaintiff's material failure to perform all of the work necessary for Project completion.

REQUEST NO. 14. (INT): Identify the date of final completion of the Project:

Answer: Defendant contends that the Project was discontinued due to Plaintiff's material failure to perform all of the work necessary for Project completion.

REQUEST NO. 15 (RFA): During a meeting on March 23, 2000, the Engineer informed prospective bidders on the Project that if restoration work was extended into the winter, the time for completion would be extended and that the Engineer did not expect the contractor to seed, mulch, pave or do concrete restoration through the winter months.

Admitted: **Denied: XXX**

REQUEST NO. 16 (INT): To the extent your response to the previous Request is anything other than an unqualified admission, identify what the Engineer's response was when questioned at the meeting on March 23, 2000, as to whether the time for completion for the Project would be extended because construction would probably extend into the winter.

Answer: Please see attached documents.

REQUEST NO. 17 (INT): Identify: (a) all members, employees, and/or agents of the Authority with knowledge about the Project, and (b) for each person, identify the scope of their knowledge about the Project.

Answer: Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location.

REQUEST NO. 18 (INT): Identify the dollar amount you are withholding from CCI as liquidated damages pursuant to the Contract:

Answer: $190,978.00

REQUEST NO. 19 (INT): Other than the liquidated damages identified in answer to the previous Request, itemize and show the calculation of all damages you seek in your Counterclaim.

Answer: Defendant is currently attempting to determine the full extent of its damages and reserves the right to seasonable supplement this response.

REQUEST NO. 20 (RFD): Produce all invoices, notes, estimates, or other documents that support calculations of the itemization set forth in answer to the previous Request.

Please see response to Request No. 19.

REQUEST NO. 21 (RFA): In applying for the General Permit ultimately issued by the Pennsylvania Department of Environmental Protection on or about March 22, 2000, you included a "Location Map" upon which "Simeling Run" was identified.

Admitted: XXX **Denied:**

REQUEST NO. 22 (RFD): Produce the "Location Map" included in your application for the General Permit ultimately issued by the Pennsylvania Department of Environmental Protection on or about March 22, 2000.

See attached.

REQUEST NO. 23. (RFD): Produce Inspection Reports prepared by the Pennsylvania Department of Environmental Protection for the Project.

Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location.

REQUEST NO. 24 (RFD): Produce Inspection Reports prepared by the U.S. Army Corps of Engineers for the Project.

Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location.

REQUEST NO. 25 (INT): Identify all sources of funding for the Project.

Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location.

REQUEST NO. 26 (RFD): Produce the loan and/or grant agreements between you and each of the funding sources identified in answer to the previous Request.

Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location.

REQUEST NO. 27 (RFD): Produce all Change Orders or other Amendments to the Contract.

Please see relevant documents. Defendant is willing to make said documents available for inspection at a mutually convenient date, time and location.

Respectfully submitted,

MARGOLIS EDELSTEIN

By: _____

Rolf E. Kroll, Esquire
3510 Trindle Road
Camp Hill, PA 17011
I.D. No. 47243
(717) 975-8114

Attorney for Defendant
Wallaceton-Boggs Municipal
Authority

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

Wallaceton-Boggs Municipal Authority Pre-Bid Meeting Minutes
March 23, 2000
Contract 2000-01 – Sanitary Sewer Construction Project

The following items and issues were discussed during the meeting.

1. Sweetland Engineering & Associates, Inc. (SEA) noted that attendance at this Pre-Bid Meeting was required in order to submit a responsive Bid Proposal. A copy of the sign in sheet is attached to these meeting minutes.

2. SEA introduced project personnel with individual introductions made by all meeting attendees.

3. A brief project overview was presented by SEA as follows:
The project consist of 48,570 L.F. of 8" sanitary sewer, 2,660 L.F. of 6" force main, and 6,400 L.F. of sewer laterals and appurtenances.

4. SEA discussed special project information and special considerations as follows:

   A. Project funding was noted to include an EPA Grant. It was also noted that special requirements result from this specific grant. Additionally, funding from PENNVEST and the Owner would also be provided.

   B. MBE/WBE requirements specific to the EPA Grant were noted. All Bidders were instructed to thoroughly review the federal insert within Division 0 of the Project Manual.

   C. Meeting attendees were advised of a correction forthcoming relative to the Invitation to Bid, specifically 00100, page 1. It was noted that circular 11376 should read 11375.

   D. SEA provided a brief overview regarding status of permits and easements. It was noted that the DEP Part II Permit was approved and would be completed and available within approximately one (1) week. All easements have be obtained or condemnations will be filed prior to Award of the contract. Additionally, Erosion & Sedimentation Control Plan approval was also noted by DEP to be forthcoming.

   E. SEA discussed PennDOT work requirements for completion of approximately 2,600 L.F. of sewer, 13 manholes, 575 L.F. of laterals, and temporary paving that by July 28, 2000. SEA then handed out summary sheets presenting this information.

F. SEA presented a brief discussion regarding sanitary sewer construction experience, and the requirement for any Contractor submitting a bid to have sewer construction experience in order to be accepted as a responsible bidder.

5. It was noted that Bids for Contract 2000-01 would be due April 6, 2000 at 1:00 p.m. at the Boggs Township Building (location of Pre-Bid Meeting). NO Bids will be accepted after 1:00 p.m.

6. The meeting was opened for questions from prospective bidders. The following questions and responses were presented.

A. It was noted that a few of the bid items, for example Bid Item 2F, do not show an estimated quantity. Guidance was requested on how to respond in these particular instances on the Bid Form. SEA noted that the 0 or no quantity appeared whenever we did not anticipate work for that specific bid item, at this time. However, a bid price should be submitted by the contractor should we encounter that specific bid item during the course of construction.

B. A question was presented relative to Bid Item No. 21, Pump Station. This item also presents a quantity of 0. SEA indicated that Bid Item No. 21, Pump Station would be deleted in the forthcoming Addendum No. 1.

C. A request was presented for additional information for the Alternatives included in the Bid Form. Specifically the number of connections or houses, and general location was requested. SEA indicated that they would endeavor to prepare a location map and provide the required information as part of Addendum No. 1.

D. It was noted that Alternative F includes 2,600 L.F. of sewer pipe, but does not include any manholes. SEA noted that they would review the requirements, and revisions would be identified in the forthcoming Addendum No. 1.

E. A request was presented for consideration for a pay item for a waterline break repair. SEA indicated that they would review this item.

F. The question was raised whether blasting would be permitted in certain situations. SEA responded that blasting would be permitted in certain situations.

G. The question was presented regarding the value of the PennDOT Bond. SEA indicated that they would investigate this issue further and present information as it becomes available from PennDOT.

H. A question was presented relative to sewer line construction through concrete on the property adjacent to the treatment plant site. The owner of the adjacent property, Mr. Dufour, indicated that concrete encountered for sewer must be replaced. SEA noted that a pay item is provided for cubic yards of concrete, which will be utilized for payment.

I. The question was raised as to the basis of award for the contract. SEA indicated that the base bid would provide the basis for award. Additionally, it was noted that all unit prices for the Alternative should be identical to base bid prices, or as indicated by the Engineer in the Bid Form.

J. The anticipated start date for construction was questioned. SEA indicated that their preference would be to start in May; however, that start date is highly dependent upon PennVEST and other financing; therefore, a commitment could not be made at that time.

K. Mr. Tom Shaffer, PFG Gas, Inc., was in attendance. He indicated that he would be very involved in the project and work closely to resolve utility line conflicts. He indicated that he would also attend the Pre-Construction Conference.

L. A question was raised relative to utility conflicts and the timing for decisions relative to relocation. Specifically, the contract specifications allow two (2) days. SEA indicated that there would be a Resident Project Representative (RPR) on site, and it would be reasonable to anticipate decisions from the RPR or the Engineer within one (1) day.

Any meeting attendees or authorized persons who take exception to any statement in this record of the Pre-Bid Meeting, shall notify Tracy A. Gardner, Sweetland Engineering & Associates, Inc., in writing, within five (5) days of receipt of these minutes, stating in detail the correction or omission. Otherwise, this Report shall be considered correct and final.

Respectfully submitted,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

TAG:rmm

cc: File

SEWER LINE

WALLACETON-BOGGS MUNICIPAL AUTHORITY
CONTRACT 2000-01
PRE-BID MEETING SIGN IN SHEET
MARCH 23, 2000

NAME	COMPANY	ADDRESS	PHONE	FAX
Rick Mangold	Continental Const Inc	P.O. Box 126	814-766-6126	
Matt Greenland	Greenland Const.	Clearfield PA	765-6841	765-6151
Mark Sylvester	Miles Development Corp.	Clarion PA	226-7939	226-5156
T.E. Crosby	Gardner Construction	RR#1 Austin Pa. 16720	814-647-3318	
Del Wilson	D. J. Wilson Sons	West Oresanta	857-7217	
James F Mack	P.B.I.	State College	814-235-5071	

20585

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

February 22, 2001

Continental Construction, Inc.
P.O. Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01; Sanitary Sewer Construction Project

Dear Ms. Marzella:

In response to your request for a winter shut down, there are specific items that must be addressed before a winter shutdown would be considered.

A Substantial Completion Inspection must be conducted to verify that the work done by CCI is completed to the point that the system could be used for its intended use. If the Substantial Completion reveals that the system cannot be used for its intended use, CCI would be required to continue work until this requirement is met.

As you know, we have requested additional information in the area of Manholes A-41 through A-43 to verify a functional system as designed.

We also have requested removal and replacement of manholes in some areas.

The winter shut down does not extend the final completion date. As you know, the final completion date has been reached on this project. If all parties agree to a winter shut down, the project time will stop at a pre determined date and begin again when conditions allow you to complete all work to reach final completion. Thus, the assessment of liquidated damages would stop at the agreed upon date of stoppage of work and commence when work activities begin again.

Mr. Sylvester's letter is correct. The completion of restoration items may require a stoppage of work until weather is conducive to do so. Mr. Sylvester has first hand knowledge of SEA's work stoppage procedures. Mr. Sylvester was employed by Miles Construction, on a similar project that a work stoppage agreement was executed. The number of days allotted to the project is not increased for restoration. As stated previously, the contract time for final completion of Contract 2000-01 has already been expended.

To allow the winter shutdown, an Agreement between all parties must be executed. This Agreement would require CCI to take full responsibility for maintenance of trench lines throughout the project. This includes temporary paving driveways, private and public drives, and roadways. Throughout the project there are many areas of grass areas that are disturbed. The specification for fine grading and seeding requires not less than 4" of compacted topsoil in restoration areas. With the great amount of soils that will require removal prior to placement of topsoil to reach finish grades. We believe that this work may be done until weather permits placement of topsoil. CCI's foreman was asked on July 24, 2000 why there were not seperatory topsoil? He stated that CCI would bring it in at the end of the job. The lack of topsoil separation was consistent through out the entire project.

There is also soil testings required to determine the PH of the topsoils proposed for use on the project. Submission of seed, fertilizer, and lime is also required.

We will forward CCI's formal request to the WBMA to begin the preparation of an Agreement for all parties.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

Cc: WBMA
U.S. Army Corps of Engineers, Pablo Colon-Garay
DEP, Bill Malinich
George S. Test, Esquire
SEA Field Office
File 3334-2; Contract 2000-01

3283 S. Main St., PO Box 287
Sandy Lake, PA. 16145

HORIZON
Construction Group, Inc.

Tel.: (724)376-4473
Fax: (724)376-4475

www.hcgroup.net

February 16, 2001

Mr. Rick Marzella
Continental Construction, Inc.
HCR #2
Ridgeway, PA 15853

RE: Decator Township Sanitary Sewer Project

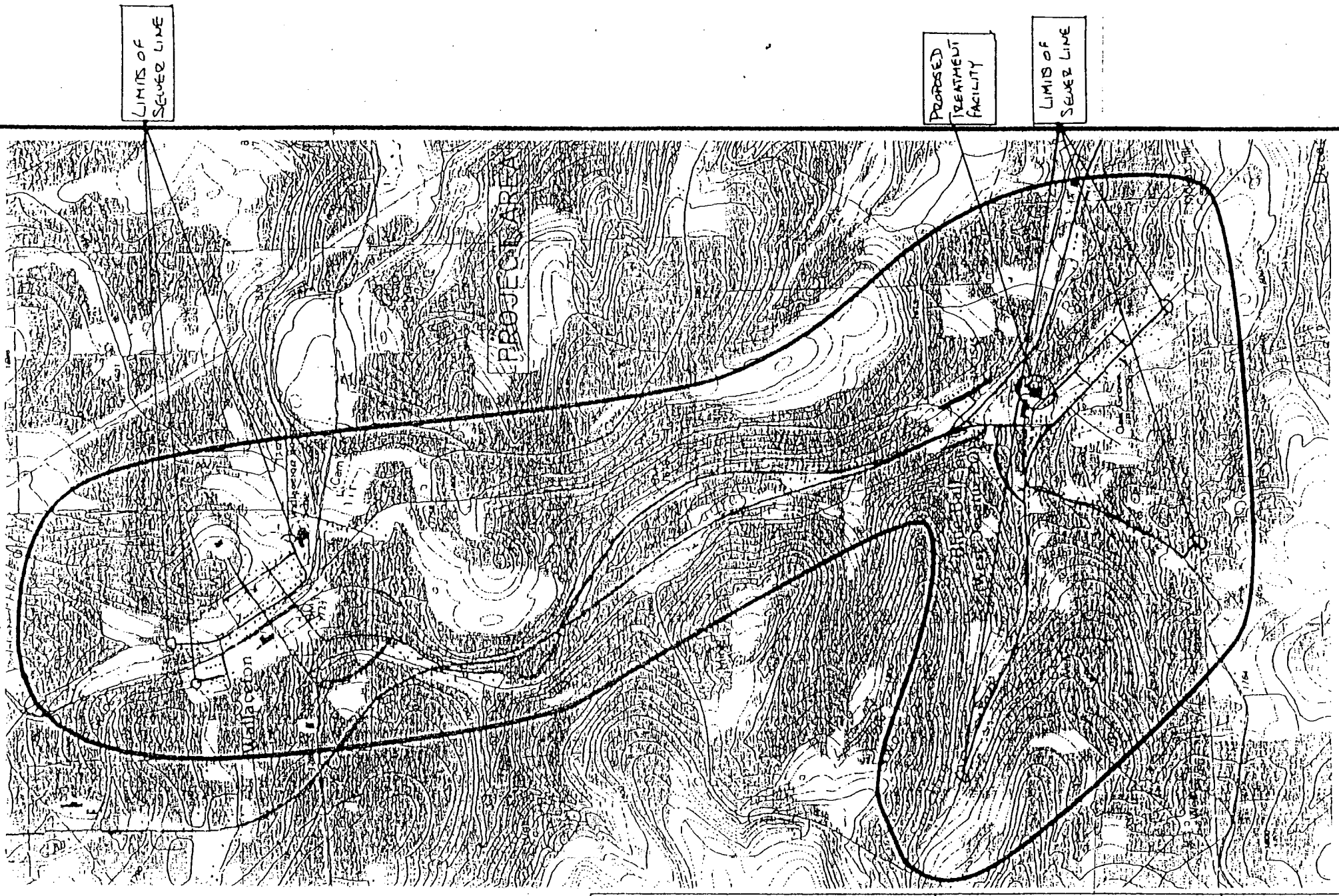
Dear Mr. Marzella,

On March 23, 2000 I attended the Pre-Bid Meeting for the above referenced project along with other contractor's representatives. During the "question & answer" portion of this meeting, a representative of one of the contractors, (I do not recall who), brought up the question of time of completion for this project. They questioned whether the time for completion allotted by the Specifications would allow the contractor awarded this project sufficient time complete their restoration since the timing of award and construction would most likely run into the winter months, thus making inclement weather a factor in being able to restore the areas affected by pipeline construction. The Authority's Consulting Engineer's representatives at this meeting responded to this question by stating that if the timing of the project would push restoration items into the bad weather months, they would extend the time for completion to allow the restoration to be done when the weather was conducive to do so. They stated that they "would not expect the contractor to seed, mulch, pave or do concrete restoration through the winter months".

Please do not hesitate to contact us if you need additional information or have any questions or comments.

Sincerely,

Mark Sylvester
President



Sweetland Engineering & Associates, Inc. and/or David L. Sweetland, P.E., P.L.S. expressly reserves its common law copyright and other rights in these plans. These plans are not to be reproduced, changed, or copied in any form or manner whatsoever, nor are they to be assigned to any third party without permission and consent of Sweetland Engineering &

SWEETLAND ENGINEERING & ASSOCIATES, INC.
800 Science Park Road
State College, Pennsylvania 16803

PROJECT TITLE:
Wallaceton–Boggs Project Location Map

PROJECT NO. 3334

DATE: 10/22/98

SHEET NO. 1

VERIFICATION

I, Chris Bungo, Secretary/Treasurer for Wallaceton-Boggs Municipal Authority, state that I have read the foregoing Responses of Defendant to Plaintiff's Requests for Admissions, Documents and Interrogatories - Set I; and that the facts stated therein are true and correct to the best of my knowledge, information and belief.

I understand that any false statements herein are made subject to penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

DATE: Feb 28 03

Chris Bungo

CHRIS BUNGO
Secretary/Treasurer for
Wallaceton-Boggs Municipal Authority

CERTIFICATE OF SERVICE

I, Vicki A. Bolinger, RP, an employee of Margolis Edelstein, hereby certify that I served a true and correct copy of the foregoing RESPONSES OF DEFENDANT TO PLAINTIFF'S REQUESTS FOR ADMISSIONS, DOCUMENTS AND INTERROGATORIES - SET I on all counsel of record by placing the same in the United States mail at Camp Hill, Pennsylvania, first-class postage prepaid, on the 3rd day of March,2003, and addressed as follows:

James A. Naddeo, Esquire
211 ½ East Locust Street
P.O. Box 552
Clearfield, PA 16830

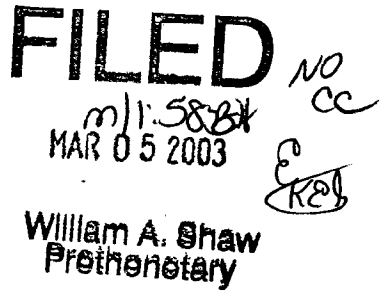
George S. Test, Esquire
Solicitor - Wallaceton-Boggs Municipal Authority
P.O. Box 706
Philipsburg, PA 16866

Kevin J. McKeon, Esquire
FLUKE, WEIERS & SCHMITT, P.C.
1400 The Bank Tower
Pittsburgh, PA 15222
Attorney for Plaintiff

Francis X. McTiernan, Jr., Esquire
437 Grant Street, Suite 1624
Pittsburgh, PA 15219-6101
Attorney for Sweetland Engineering

Vicki A. Bolinger

Vicki A. Bolinger, RP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MAR 05 2003
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PROOF OF SERVICE OF DISCOVERY REQUESTS

Filed on behalf of:
CONTINENTAL
CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon
Pa. I.D. #76232

WATT, TIEDER, HOFFAR &
FITZGERALD, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102
(703) 749-1000

FILED

MAY 12 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PROOF OF SERVICE OF DISCOVERY REQUESTS

I, Kevin J. McKeon, hereby certify that a true and correct copy of the Plaintiff's Requests for Admissions, Documents and Interrogatories directed to Defendant, Set I, was served upon the following on the 9th day of May, 2003, via U.S. Mail:

Rolf E. Kroll, Esq.
Shaun J. Mumford, Esq.
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Attorney for Sweetland Engineering & Associates, Inc.

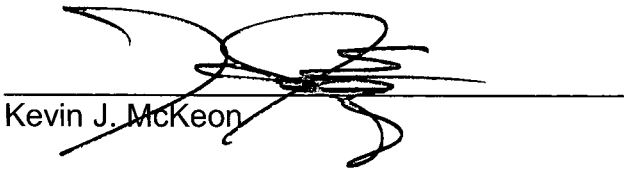
Kevin J. McKeon

CERTIFICATE OF SERVICE

I, Kevin J. McKeon, hereby certify that a true and correct copy of the foregoing Proof of Service of Discovery Requests was served upon the following on the 9th day of May, 2003, via U.S. Mail:

Rolf E. Kroll, Esq.
Shaun J. Mumford, Esq.
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Attorney for Sweetland Engineering & Associates, Inc.



Kevin J. McKeon

FILED NO CC
m 11:23 BH
MAY 12 2003
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.

Plaintiff,

vs.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant,

vs.

SWEETLAND ENGINEERING & ASSOCIATES, INC.,

Additional Defendant.

CIVIL DIVISION

NO. 01-1265-CD

MOTION FOR PROTECTIVE ORDER

Filed on behalf of Sweetland Engineering & Associates, Inc., Additional Defendant

Counsel of Record for this Party:

Francis X. McTiernan, Jr., Esq.
Pa. ID 43587

WAYMAN, IRVIN & McAULEY
Firm # 583
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219

(412) 566-2970

FILED NO CC
m/ 11:08 BOY
MAY 27 2003
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC. — CIVIL DIVISION

Plaintiff, — NO. 01-1265-CD

vs.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant,

vs.

SWEETLAND ENGINEERING & ASSOCIATES, INC.

Additional Defendant.

MOTION FOR PROTECTIVE ORDER

AND NOW, comes the Additional Defendant, Sweetland Engineering & Associates, Inc., by and through its counsel, Wayman, Irvin & McAuley and files the following Motion for Protective Order:

1. This case arises out of a sewer construction project performed by Plaintiff Continental Construction, Inc. ("Continental") for the Wallaceton-Boggs Municipal Authority ("WBMA").

2. This case was commenced on August 3, 2001, with the filing of a Complaint by Continental against the WBMA, wherein Continental set forth 22 separate Counts against the WBMA.

3. On May 15, 2002, this Additional Defendant, Sweetland Engineering & Associates, Inc. ("Sweetland"), was joined as an Additional Defendant by Writ of Summons.

4. However, as of this date, no Complaint has been filed against Sweetland.

5. Nevertheless, on May 12, 2003, Plaintiff Continental served discovery requests upon Sweetland in the form of Interrogatories, Requests for Admissions and Requests for Production of Documents. (See Plaintiff's Discovery Requests, attached hereto and marked as Exhibit "A").

6. Sweetland maintains that these discovery requests are premature because generally a party should not be required to respond to discovery until a Complaint is filed against that party.

7. The various policies of fairness, justice and efficiency which mandate this general rule were set forth in the case of *Potts v. Consolidated Rail Corp.*, 37 D&C 4th 196 (Allegheny 1998), wherein the Court explained that:

(a) a party should be given the opportunity to file Preliminary Objections to show that the claims raised in the complaint fail to state a cause of action before the party is required to respond to discovery;

(b) a party should not be required to engage in discovery until the party has the opportunity to review the plaintiff's claims so as to identify and construct the proper defenses to those claims;

(c) until a Complaint is filed, a party and the Court are unable to determine whether the discovery is within the scope of permissible discovery as defined by Pa.R.C.P. 4003.1; and

(d) allowing a plaintiff to serve discovery before the filing of the Complaint gives the plaintiff an unfair advantage of fully discussing the claims with counsel, while not providing the defendant with a similar opportunity to discuss the defenses with counsel.

See *Potts v. Consolidated Rail Corp.*, 37 D&C 4th at 200-01.

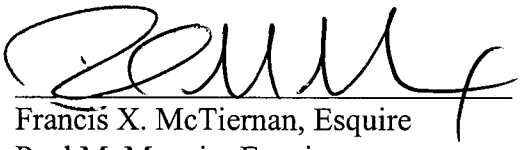
8. All of these policies apply in the present case, as a Complaint has not been filed against Sweetland and, thus, Sweetland has not been afforded the opportunity to analyze the claims against it and determine the applicable defenses

9. Therefore, Sweetland respectfully requests that, pursuant to Pa.R.C.P. 4012 and

4014, this Honorable Court issue a Protective Order extending the deadline for Sweetland's filing responses to the Interrogatories, Requests for Admissions and Requests for Production of Documents until sixty (60) days after the filing of a Complaint against Sweetland.

RESPECTFULLY SUBMITTED,

WAYMAN, IRVIN & McAULEY

BY: 

Francis X. McTiernan, Esquire
Paul M. Mannix, Esquire
Attorneys for Defendant Sweetland Engineers & Associates, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

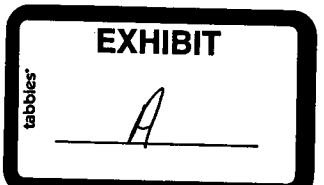
PLAINTIFF'S REQUESTS FOR ADMISSIONS, DOCUMENTS AND INTERROGATORIES DIRECTED TO ADDITIONAL DEFENDANT, SET I

Served on behalf of:
CONTINENTAL
CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon
Pa. I.D. #76232

WATT, TIEDER, HOFFAR &
FITZGERALD, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102
(703) 749-1000



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PLAINTIFF'S REQUESTS FOR ADMISSIONS, DOCUMENTS AND INTERROGATORIES DIRECTED TO ADDITIONAL DEFENDANT, SET I

COMES NOW the Plaintiff, Continental Construction, Inc., by and through its undersigned counsel, and hereby submits the following ten (10) Requests for Admissions, twelve (12) Requests for Production of Documents, and seven (7) Interrogatories Directed to Additional Defendant, Sweetland Engineering & Associates, Inc.

INSTRUCTIONS AND DEFINITIONS

A. As used in these interrogatories and requests, the pronouns "you" and "your" refer to Sweetland Engineering & Associates, Inc., and the persons and/or entities mentioned in Clause "C" below.

B. As used in these interrogatories and requests, the term "document" means without limitation, the following items, whether printed, recorded, or reproduced by any mechanical process or written or produced by hand: agreements, contracts,

communications, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, tape recordings, diaries, graphs, reports, notes, e-mails, facsimiles, notebooks, note charts, plans, drawings, sketches, file cards, indices, logs, ledgers, summaries or records of meetings or conferences, summaries or reports of investigations and negotiations, opinions or reports of consultants, photographs, receipts, invoices, brochures, pamphlets, circulars, press releases, drafts, letters, including any marginal comments appearing on any of the documents, checks (canceled or otherwise), minutes, letters, rules, and any and all other writings.

C. Where information or knowledge in the possession of a party is requested, such request includes information or knowledge of a party's members, directors, partners, agents, employees, representatives, and, unless privileged, the party's attorneys.

D. Where the name of a person or entity is requested, indicate the full name, business firm, business address, home address, business telephone number and if applicable, home telephone number.

E. A request to "identify" when used in these interrogatories and requests with reference to a person means to state the name, last known address, occupation, employer, and telephone number of such person; when used with reference to a company, it means to state the name, last known address and telephone number of such company. When the word "identify" is used in these interrogatories and requests with reference to an item or document, it means to state, with respect to each item or

document, the author, date, addressee, title, and any other information, which would enable Plaintiff to ascertain the identity and location of such item or document.

F. As used in these interrogatories and requests, the following definitions shall apply:

"Authority" shall mean the Defendant, Wallaceton-Boggs Municipal Authority, its members, directors, partners, agents, employees, representatives, and, unless privileged, its solicitors or attorneys;

"Project" shall mean that certain construction project sometimes referred to as "Contract No. 2000-1: Wallaceton-Boggs Municipal Authority Sanitary Sewer Construction Project," consisting of the installation of gravity sewer main and force main sewer line, related appurtenances and surface restoration in the Borough of Wallaceton and Township of Boggs in Clearfield County, Pennsylvania;

"Contract" shall mean all documents constituting "Contract No. 2000-1: Wallaceton-Boggs Municipal Authority Sanitary Sewer Construction Project" and/or incorporated by reference therein;

"Engineer" shall mean Sweetland Engineering & Associates, Inc., its members, directors, partners, agents, employees, representatives, and, unless privileged, its attorneys;

"CCI" shall mean Plaintiff Continental Construction, Inc., its owners, agents, employees, and representatives;

"RFA" shall indicate that the Request is a Request for Admission;

"RFD" shall indicate that the Request is a Request for Production of Documents; and

"INT" shall indicate that the Request is an Interrogatory.

REQUEST NO. 1. (RFA): You did not identify or locate all easements and rights-of-way necessary for construction of the Project prior to the date that CCI was provided Notice to Proceed with construction of Project.

Admitted:_____ Denied:_____

REQUEST NO. 2. (INT): Identify all easements and rights-of-way you identified or located to allow for construction of the Project prior to the date prior to the date that CCI was provided Notice to Proceed with construction of the Project.

Answer:

REQUEST NO. 3. (RFD): Produce any documents identifying or locating necessary easements or rights-of-way to allow for construction of the Project.

REQUEST NO. 4. (RFA): You provided CCI with a Certificate of Substantial Completion certifying that the Project was substantially complete on or about April 23, 2001.

Admitted:_____ Denied:_____

REQUEST NO. 5. (RFA): The Project was substantially complete as of April 18, 2001.

Admitted:_____ Denied:_____

REQUEST NO. 6. (INT): To the extent that your response to the previous Request is anything other than an unqualified admission, identify the date upon which the Project was substantially complete.

Answer:

REQUEST NO. 7. (RFA): CCI has completed each and every item of work set forth in the Engineer's attachment to the Certificate of Substantial Completion issued on or about April 23, 2001, titled "Cost Estimate for Project Completion."

Admitted:_____ Denied:_____

REQUEST NO. 8. (INT): To the extent your response to the previous Request is anything other than an unqualified admission:

(a) identify each and every item of work set forth in the Engineer's attachment to the Certificate of Substantial Completion issued on or about April 23, 2001, titled "Cost Estimate for Project Completion," that remains incomplete and/or defective;

(b) identify any other items of work that you claim are incomplete and/or defective; and

(c) identify the dollar amount, if any, that you recommended to be withheld for each such incomplete and/or defective item.

Answer:

REQUEST NO. 9. (RFD): For any items of incomplete and/or defective work identified in answer to subparts (a) or (b), respectively, of the previous Request, produce any invoices, notes, estimates or other documents supporting calculation of the dollar amounts identified in answer to subpart (c).

REQUEST NO. 10. (RFA): CCI repeatedly requested that you and the Authority conduct a final inspection of the Project.

Admitted:_____ Denied:_____

REQUEST NO. 11. (RFA): Neither you nor the Authority has conducted a final inspection of the Project pursuant to Article 14.06 of the General Conditions of the Contract.

Admitted:_____ Denied:_____

REQUEST NO. 12. (INT): To the extent your response to the previous Request is anything other than an unqualified admission, identify: (a) the date upon which the final inspection took place, and (b) all persons who participated in such final inspection.

Answer:

REQUEST NO. 13. (RFD): Produce any notes, lists or reports generated during or as a result of the final inspection, if any, which took place on the date identified in answer to the previous Recuest.

REQUEST NO. 14. (RFA): Other than the Engineer's attachment to the Certificate of Substantial Completion issued on or about April 23, 2001, titled "Cost Estimate for Project Completion," neither you nor the Authority ever issued a punchlist or other document identifying items of incomplete or defective work after the date of substantial completion.

Admitted: _____ Denied: _____

REQUEST NO. 15. (RFD): To the extent your response to the previous Request is anything other than an unqualified admission, produce the punchlist or other document identifying items of incomplete or defective work issued after the date of substantial completion.

REQUEST NO. 16. (INT): Identify the date of final completion of the Project:

ANSWER:

REQUEST NO. 17. (RFA): During a meeting on March 23, 2000, you informed prospective bidders on the Project that if restoration work was extended into the winter, the time for completion would be extended and that you did not expect the contractor to seed, mulch, pave or do concrete restoration through the winter months.

Admitted:_____ Denied:_____

REQUEST NO. 18. (INT): To the extent your response to the previous Request is anything other than an unqualified admission, identify what your response was when questioned at the meeting on March 23, 2000, as to whether the time for completion for the Project would be extended because construction would probably extend into the winter.

Answer:

REQUEST NO. 19. (RFD): Produce any notes, memoranda, meeting minutes or other documentation related to information provided or received at the meeting on March 23, 2000 regarding the Project.

REQUEST NO. 20. (INT): Identify: (a) all members, employees and/or agents of the Engineer with knowledge about the Project, and (b) for each person, identify the scope of their knowledge about the Project.

Answer:

REQUEST NO. 21. (RFD): Produce all notes, reports, memoranda, correspondence or other documentation related to inspections on the Project prepared by your inspector, the "Resident Project Representative," or other employees who inspected the Project.

REQUEST NO. 22. (RFA): You did not obtain all necessary permits for the Project prior to commencement of the Project.

Admitted:_____ Denied:_____

REQUEST NO. 23. (RFA): In applying for the General Permit ultimately issued by the Pennsylvania Department of Environmental Protection on or about March 22, 2000, you included a "Location Map" upon which "Simeling Run" was identified.

Admitted:_____ Denied:_____

REQUEST NO. 24. (RFD): Produce the "Location Map" included in your application for the General Permit ultimately issued by the Pennsylvania Department of Environmental Protection on or about March 22, 2000.

REQUEST NO. 25. (RFD): Produce any and all correspondence, applications, responses or other documentation related to the application for and receipt of permits related to the Project.

REQUEST NO. 26. (RFD): Produce all reports, drawings, specifications or other documentation you relied upon to identify and locate sub-surface conditions on the Project when designing the Project.

REQUEST NO. 27. (RFD): Produce Inspection Reports prepared by the Pennsylvania Department of Environmental Protection for the Project.

REQUEST NO. 28. (RFD): Produce Inspection Reports prepared by the U.S. Army Corps of Engineers for the Project.

REQUEST NO. 29. (RFD): Produce all Change Orders or other Amendments to the Contract.

Respectfully submitted,

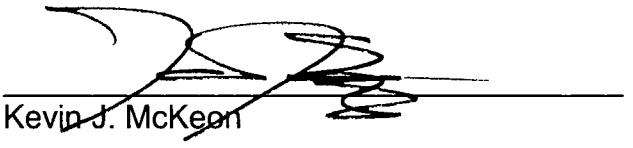
Kevin J. McKeon
Watt, Tieder, Hoffar & Fitzgerald, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Kevin J. McKeon, hereby certify that a true and correct copy of the foregoing Plaintiff's Requests for Admissions, Documents and Interrogatories directed to Additional Defendant, Set I, were served upon the following on the 9th day of May, 2003, via U.S. Mail:

Rolf E. Kroll, Esq.
Shaun J. Mumford, Esq.
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Attorney for Sweetland Engineering & Associates, Inc.



Kevin J. McKeon

Doc. # 202218v1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC. CIVIL DIVISION

Plaintiff, NO. 01-1265-CD

vs.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant,

vs.

SWEETLAND ENGINEERING & ASSOCIATES, INC.

Additional Defendant.

ORDER OF COURT

AND NOW, this ____ day of _____, 2003, it is hereby ORDERED, ADJUDGED and DECREED that Additional Defendant, Sweetland Engineering & Associates, Inc. is not required to respond to Plaintiff's Interrogatories, Requests for Admissions or Requests for Production of Documents until sixty (60) days after a Complaint is filed against Sweetland Engineering & Associates, Inc.

_____ J.

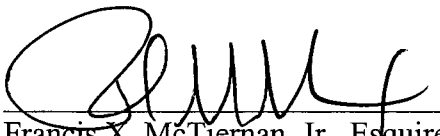
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **MOTION FOR PROTECTIVE ORDER** was mailed by facsimile and First Class Mail, postage prepaid to all counsel of record on the 23nd day of May, 2003 as follows:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
MARGOLIS, EDELSTEIN
P.O. Box 932
Harrisburg, PA 17108-0932

Kevin J. McKeon, Esquire
WATT, TIEDER, HOFFAR & FITZGERALD, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102

WAYMAN, IRVIN & MCAULEY



Francis X. McTiernan, Jr., Esquire
Paul M. Mannix, Esquire
Attorneys for Defendant Sweetland
Engineers & Associates, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.	:	01-1265-CD
vs.	:	
WALLACETON-BOGGS MUNICIPAL AUTHORITY	:	
vs.	:	
SWEETLAND ENGINEERING & ASSOCIATES	:	

ORDER

NOW, this 27th day of May, 2003, it is the ORDER of the Court that Additional Defendant's Motion for Protective Order, is scheduled for the 30 day of May, 2003 at 9:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

JOHN K. REILLY, JR.
President Judge

FILED

MAY 28 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CONTINENTAL CONSTRUCTION, INC.	:	
-vs-	:	
WALLACETON-BOGGS MUNICIPAL	:	No. 01 – 1265 – CD
-vs-	:	
SWEETLAND ENGINEERING & ASSOCIATES, INC.	:	

ORDER

NOW, this 30th day of May, 2003, following argument into Motion for Protective Order filed on behalf of Additional Defendant Sweetland Engineering & Associates, Inc., it is the ORDER of this Court that said Motion be and is hereby granted to the extent that Sweetland Engineering & Associates, Inc. shall be and is hereby given until August 15, 2003, to fully and completely respond to all discovery demands made by Plaintiff Continental Construction, Inc.

By the Court,

President Judge

FILED

MAY 30 2003

William A. Shaw
Prothonotary

FILED

O 3:34 BD

MAY 30 2003

William A. Shaw
Prothonotary

1 cc atty McTiernan
1 cc atty McKeon
1 cc atty Kroll

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

vs.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant,

vs.

SWEETLAND ENGINEERING & ASSOCIATES, INC.,

Additional Defendant.

CIVIL DIVISION

NO. 01-1265-CD

NOTICE OF SERVICE OF DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.'S OBJECTIONS, RESPONSES AND ANSWERS TO PLAINTIFF'S REQUEST FOR ADMISSIONS, DOCUMENTS AND INTERROGATORIES, SET 1

Filed on behalf of Additional Defendant:
Sweetland Engineering & Associates, Inc.

Counsel of Record for this Party:
PAUL M. MANNIX, ESQUIRE
PA ID No. 76225

WAYMAN, IRVIN & MCAULEY, LLC
Firm #583
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219

412-566-2970
412-391-1464 (fax)

FILED

AUG 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
Plaintiff,	)	NO. 01-1265-CD
vs.	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
Defendant,	)	
vs.	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
Additional Defendant.	)	

NOTICE OF SERVICE OF DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.'S OBJECTIONS, RESPONSES AND ANSWERS TO PLAINTIFF'S REQUESTS FOR ADMISSIONS, DOCUMENTS AND INTERROGATORIES, SET 1

TO: PROTHONOTARY

KINDLY TAKE NOTICE that Defendant Sweetland Engineering & Associates, Inc.'s Objections, Responses and Answers to Plaintiff's Requests for Admissions, Documents and Interrogatories, Set 1 has been served upon counsel by first class, U.S. mail, postage pre-paid, or by hand delivery this 14th day of August, 2003.

Respectfully submitted,

WAYMAN, IRVIN & MCAULEY, LLC

PAUL M. MANNIX, ESQUIRE
PA ID No. 76225

Attorney for Additional Defendant, Sweetland Engineering & Associates, Inc.

NO. 01-1265-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF SERVICE OF DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.'S RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS, DOCUMENTS AND INTERROGATORIES, SET 1** has been served on the following counsel of record by first class U.S. mail, postage pre-paid, or by hand delivery, this 14th day of August, 2003:

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932

WAYMAN, IRVIN & MCAULEY, LLC

PAUL M. MANNIX, ESQUIRE

Attorney for Additional Defendant, Sweetland Engineering & Associates, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PROOF OF SERVICE OF DISCOVERY REQUESTS

Filed on behalf of:
CONTINENTAL
CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon
Pa. I.D. #76232

WATT, TIEDER, HOFFAR &
FITZGERALD, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102
(703) 749-1000

FILED

NOV 21 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PROOF OF SERVICE OF DISCOVERY REQUESTS

I, Kevin J. McKeon, hereby certify that a true and correct copy of the Plaintiff's Requests for Production of Documents Directed to Additional Defendant, Set II, was served upon the following on the 18th day of November, 2003, via U.S. Mail:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
Paul N. Mannix, Esquire
Wayman Irvin & McAuley, L.L.C.
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Attorney for Sweetland Engineering & Associates, Inc.

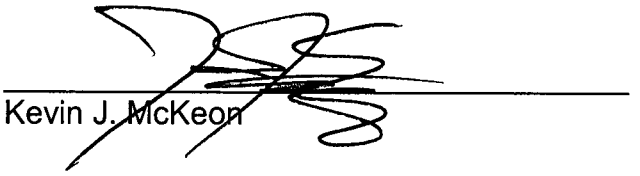
Kevin J. McKeon

CERTIFICATE OF SERVICE

I, Kevin J. McKeon, hereby certify that a true and correct copy of the foregoing Proof of Service of Discovery Requests was served upon the following on the 18th day of November, 2003, via U.S. Mail:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
Paul N. Mannix, Esquire
Wayman Irvin & McAuley, L.L.C.
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Attorney for Sweetland Engineering & Associates, Inc.



Kevin J. McKeon

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PROOF OF SERVICE OF DISCOVERY REQUESTS

Filed on behalf of:
CONTINENTAL
CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon
Pa. I.D. #76232

WATT, TIEDER, HOFFAR &
FITZGERALD, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102
(703) 749-1000

FILED

NOV 21 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PROOF OF SERVICE OF DISCOVERY REQUESTS

I, Kevin J. McKeon, hereby certify that a true and correct copy of the Plaintiff's Requests for Production of Documents Directed to Defendant, Set II, was served upon the following on the 18th day of November, 2003, via U.S. Mail:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
Paul N. Mannix, Esquire
Wayman, Irvin & McAuley, L.L.C.
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Attorney for Sweetland Engineering & Associates, Inc.

Kevin J. McKeon

CERTIFICATE OF SERVICE

I, Kevin J. McKeon, hereby certify that a true and correct copy of the foregoing Proof of Service of Discovery Requests was served upon the following on the 18th day of November, 2003, via U.S. Mail:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
Paul N. Mannix, Esquire
Wayman Irvin & McAuley, L.L.C.
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Attorney for Sweetland Engineering & Associates, Inc.

Kevin J. McKeon

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

vs.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant,

vs.

SWEETLAND ENGINEERING & ASSOCIATES, INC.,

Additional Defendant.

CIVIL DIVISION

NO. 01-1265-CD

PRAECIPE FOR RULE TO FILE COMPLAINT TO JOIN

Filed on behalf of Additional Defendant:
Sweetland Engineering & Associates, Inc.

Counsel of Record for this Party:
PAUL M. MANNIX, ESQUIRE
PA ID No. 76225

WAYMAN, IRVIN & MCAULEY, LLC
Firm #583
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219

412-566-2970
412-391-1464 (fax)

FILED

JAN 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
Plaintiff,	)	NO. 01-1265-CD
vs.	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
Defendant,	)	
vs.	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
Additional Defendant.	)	

PRAECIPE FOR RULE TO FILE COMPLAINT TO JOIN

TO: PROTHONOTARY

KINDLY issue a Rule upon the Defendant, Wallaceton Boggs Municipal Authority, to file a Complaint to Join in the above-captioned matter within twenty (20) days from the date of service hereof or suffer a Judgment of Non Pros.

JURY TRIAL DEMANDED.

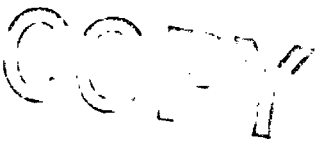
Respectfully submitted,

WAYMAN, IRVIN & MCAULEY, LLC

PAUL M. MANNIX, ESQUIRE
PA ID No. 76225

Attorney for Additional Defendant, Sweetland Engineering & Associates, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION



Continental Construction

Vs.
Wallaceton-Boggs Municipal Authority
Sweetland Engineering & Associates, Inc.

Case No. 2001-01265-CD

Vs.

Sweetland Engineering & Associates, Inc.

RULE TO FILE COMPLAINT

TO: Wallaceton Boggs Municipal Authority

YOU ARE HEREBY RULED to file a Complaint to Join in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: January 9, 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

vs.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant,

vs.

SWEETLAND ENGINEERING & ASSOCIATES, INC.,

Additional Defendant.

CIVIL DIVISION

NO. 01-1265-CD

NOTICE OF SERVICE OF RULE TO FILE COMPLAINT TO JOIN

Filed on behalf of Additional Defendant:
Sweetland Engineering & Associates, Inc.

Counsel of Record for this Party:
PAUL M. MANNIX, ESQUIRE
PA ID No. 76225

WAYMAN, IRVIN & MCAULEY, LLC
Firm #583
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219

412-566-2970
412-391-1464 (fax)

FILED

JAN 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

No. 01-1265-CD

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC., Plaintiff, vs. WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant, vs. SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant.	CIVIL DIVISION NO. 01-1265-CD

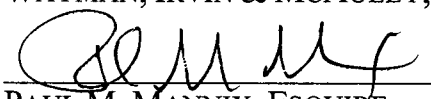
NOTICE OF SERVICE OF RULE TO FILE COMPLAINT TO JOIN

TO: PROTHONOTARY

Attached is a copy of the Certified Mail Return Receipt Requested Article No.7001 1940 0004 9102 8051 (a copy of which is attached hereto as Exhibit "A") evidencing that ROLF E. KROLL, ESQUIRE, counsel for Defendant WALLACETON-BOGGS MUNICIPAL AUTHORITY, was served with the RULE TO FILE A COMPLAINT TO JOIN on **January 15, 2004.**

Respectfully submitted,

WAYMAN, IRVIN & MCAULEY, LLC



PAUL M. MANNIX, ESQUIRE
PA ID No. 76225
Attorney for Additional Defendant,
Sweetland Engineering & Associates, Inc.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7001 1940 0004 9102 8051

OFFICIAL USE

Postage	$ .37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 4.42

Postmark Here

Sent To
Rolf E. Kroll, Esquire
Street, Apt. No.; or PO Box No. Margolis Edelstein
P.O. Box 932
City, State, ZIP+ 4
Harrisburg, PA 17108-0932

PS Form 3800, January 2001 See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Rolf E. Kroll, Esquire
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* [illegible] C. Date of Delivery [illegible]

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7001 1940 0004 9102 8051

PS Form 3811, August 2001 Domestic Return Receipt 102595-01-M-0381

EXHIBIT
tabbies
A

No. 01-1265-CD

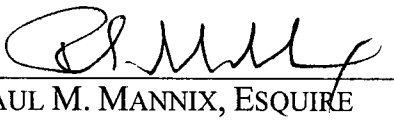
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF SERVICE OF RULE TO FILE COMPLAINT TO JOIN** has been served on the following counsel of record by first class U.S. mail, postage pre-paid, or by hand delivery, this 22nd day of January, 2004:

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932

WAYMAN, IRVIN & MCAULEY, LLC



PAUL M. MANNIX, ESQUIRE

Attorney for Additional Defendant, Sweetland Engineering & Associates, Inc.

ROLF E. KROLL. ESQUIRE
Pa. Supreme Court I.D. No. 47243
SHAUN J. MUMFORD, ESQUIRE
Pa. Supreme Court I.D. No. 84176
MARGOLIS EDELSTEIN
P.O. BOX 932
HARRISBURG, PA 17108-0932

Telephone: (717) 975-8114
Fax: (717) 975-8124
E-mail: rkroll@margolisedelstein.com

Attorneys for:
DEFENDANT

CONTINENTAL CONSTRUCTION, INC., Plaintiff	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	:	CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	:	NO. 01-1265-CD JURY TRIAL DEMANDED
v.	:	
SWEETLAND ENGINEERING, Additional Defendant	:	

FILED
APR 21 2004
William A. Shaw
Prothonotary/Clerk of Courts
2 cert to Atty

JOINDER COMPLAINT OF DEFENDANT, WALLECETON-BOGGS MUNICIPAL AUTHORITY, AGAINST ADDITIONAL DEFENDANT, SWEETLAND ENGINEERING

AND NOW, comes Defendant, Wallaceton-Boggs Municipal Authority (hereinafter "Authority"), by and through its counsel, Margolis Edelstein, and hereby files this Joinder Complaint against Additional Defendant, Sweetland Engineering (hereinafter "Sweetland"), and in support thereof avers as follows:

1. This action was commenced on or about August 8, 2001, when Plaintiff, Continental Construction, Inc. (hereinafter "CCI"), filed a Complaint against the Authority alleging breach of contract claims with regard to CCI's construction and installation of a Sanitary Sewage System for the Authority. A

true and correct copy of CCI's Complaint, along with the attached Contract between CCI and the Authority, a true and correct copy of which is attached hereto as Exhibit "A."

2. The Complaint is incorporated herein by reference without admission or adoption.

3. On or about October 8, 2001, the Authority filed an Answer and a Counterclaim to CCI's Complaint, denying a breach of the Contract by the Authority and averring a breach by CCI. A true and correct copy of the Authority's Answer and Counterclaim is attached hereto made a part hereof and marked as Exhibit "B."

3. CCI subsequently filed a Reply to the Counterclaim filed by the Authority.

4. On or about December 7, 2001, Authority filed a Petition to Join Sweetland as an additional defendant.

5. Sweetland is a corporate entity operating in Pennsylvania and maintaining a principal place of business at 600 Science Park Road, State College, Pennsylvania, 16803.

6. At all times relevant hereto, Sweetland was the project engineer and sole designer engineer of the Sanitary Sewage System that was to be constructed and installed by CCI.

7. Following the written responses of CCI and Sweetland, and argument before the Court, the Court issued an Opinion and Order on April 29, 2002, granting Authority's Petition to Join, allowing for the joinder of Sweetland as an additional defendant.

8. On or about May 15, 2002, Authority filed a Praecipe for Writ of Summons to join Sweetland as an additional defendant.

9. A Writ of Summons was issued on May 16, 2002, by the Prothonotary, and delivered to the Sheriff's Department for service upon Sweetland.

10. The Writ of Summons was served upon Sweetland on June 3, 2002.

11. The Authority incorporates by reference, while denying the same, the factual summary and the allegations of negligence set forth by CCI in its Complaint against the Authority.

12. On November 18, 1998, Authority and Sweetland entered into a contract ("the contract"), which required Sweetland to design and supervise the installation of the Sanitary Sewage System that was eventually constructed and installed by CCI. A true and correct copy of the Contract is attached hereto as Exhibit "C."

13. Upon information belief, it is hereby averred that Sweetland negligently, and in breach of the contract failed to properly design and supervise the installation of the Sanitary Sewage System in the following respects:

(a) By failing to design a Sanitary Sewage System that met all applicable standards and codes;

(b) Failing to design a Sanitary Sewage System that operated in a proper manner, and without defect;

(c) By failing to properly supervise its agents

and/or employees to ensure that the Sanitary Sewage System met all proper design criteria;

(d) By inadequately inspecting the work done by its agents and/or employees;

(e) Failing to exercise control in such a manner so that the Sanitary Sewage System was designed and constructed in a proper condition, free of defects; and

(f) Failing to properly train its agents and/or employees so as to prevent the Sanitary Sewage System from being done in a proper manner, free of defects.

14. The negligence, recklessness, carelessness and/or other liability producing conduct of Sweetland exceeds any negligence or wrongdoing on the part of the Authority, the existence of any negligence or wrongdoing on the part of the Authority being expressly denied.

15. The Authority avers that Sweetland is solely liable to Plaintiff on Plaintiff's cause of action. Alternatively, if it is determined that the Authority is liable to Plaintiff, with said liability being specifically denied, then Sweetland is jointly and severally liable with the Authority on Plaintiff's cause of action and/or Sweetland is liable over to the Authority by way of contribution and/or indemnification.

WHEREFORE, to the extent that Plaintiff, Continental Construction, Inc., is entitled to recover on its Complaint, Defendant, Wallaceton-Boggs Municipal Authority, demands judgment against Defendant, Sweetland Engineering, on the basis that it is solely liable to Plaintiff on its cause of action, liable over to the Authority by

way of contribution and/or indemnification and/or jointly and severally liable with the Authority on Plaintiff's cause of action, with any liability on the part of the Authority being expressly denied.

Respectfully submitted,

MARGOLIS EDELSTEIN

By: _____

Rolf E. Kroll, Esquire
Attorney I.D. #47243
Barry A. Kronthal, Esquire
Attorney I.D. #55672
3510 Trindle Road
Camp Hill, PA 17011
(717) 975-8114
Attorney for Defendant
Wallaceton-Boggs Municipal Authority

Exhibit A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant.

COMPLAINT IN CIVIL ACTION

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon, Esquire
Pa. I.D. #76232

FLUKE, WEIERS & SCHMITT, P.C.
Firm I.D. #029

1400 The Bank Tower
Pittsburgh, PA 15222
(412) 261-3800

JURY TRIAL DEMANDED

I hereby certify this to be a true and attested copy of the original statement filed in this case.

AUG 07 2001

Attest.

Exhibit "A" to Joinder Complaint

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
	)	Case No.
v.	)	
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
	)	
Defendant.	)	

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
David S. Meholick, Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
	)	Case No.
v.	)	
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
	)	
Defendant.	)	

COMPLAINT IN CIVIL ACTION

AND NOW, comes the Plaintiff, Continental Construction, Inc., by and through its attorneys, Fluke, Weiers & Schmitt, P.C., and Kevin J McKeon, Esquire, and files the following Complaint against Defendant, Wallaceton-Boggs Municipal Authority (hereinafter "Wallaceton-Boggs"), and in support thereof alleges as follows:

1. Plaintiff, Continental Construction, Inc. ("CCI") is a Pennsylvania corporation with its registered office and place of business located at P.O. Box 126, Johnsonburg Road, Ridgway, PA 15853.

2. Defendant, Wallaceton-Boggs Municipal Authority ("Authority"), is a Municipal Corporation whose principal place of business is located at Boggs Township Offices, West Decatur, Pennsylvania 16878.

3. Sweetland Engineering & Associates, Inc. (the "Engineer") is a Pennsylvania Corporation with its principal place of business at 600 Science Park Road, State College, PA 16803.

4. In or shortly prior to December of 1999, the Authority contracted with the Engineer to design the construction and installation of approximately 48,570 Lineal Feet of 6

Inch diameter and 8 Inch diameter gravity sewer main pipeline, approximately 2,660 Lineal Feet of 6 Inch diameter force main sewer pipeline, 6,400 Lineal Feet of sewer laterals, and related appurtenances, in the Borough of Wallaceton, and Township of Boggs, in Clearfield, Pennsylvania (hereinafter "the Project").

5. In or about December of 1999, the Authority and Engineer caused the specifications and detailed construction drawings to construct the Project, collectively named as "Contract 2000-01: Wallaceton-Boggs Municipal Authority Sanitary Sewer Construction Project" (hereinafter "the Contract Documents"), to be made available to contractors, including CCI, interested in submitting bid proposals to construct the Project. A complete copy of the Project Manual containing all of the Contract Documents and Plans is not attached hereto due to the voluminous nature of these documents, and because a copy is already in the possession of the Defendant, Authority. However, a complete copy of the Contract Agreement, General Conditions, Supplementary Conditions, and the Appendix setting forth the Soil Erosion and Sediment Pollution Control Plan Narrative, is bound, covered, and filed separately under "Exhibit A to the Complaint."

6. On March 23, 2000, CCI and other potential bidders attended a Mandatory Pre-Bid Conference conducted by the Authority and the Engineer, to clarify and discuss the scope of the work called for in the Contract Documents.

7. On or about April 6, 2000, CCI submitted its bid proposal to construct the Project, on a form prescribed by the Authority, in direct reliance on the representations made by the Authority and the Engineer as set forth in the Contract Documents, and the information discussed and provided at the Pre-Bid Conference.

8. On or about April 6, 2000 the proposals of the various bidders were opened by the Authority and it was determined that CCI was the apparent Lowest Responsible Bidder.

9. Subsequent to the bid opening, the Authority resolved to award the contract for construction of the Project to CCI, such that on or about June 21, 2000, the Authority issued a written construction contract (hereinafter "the Contract") in the amount of $1,887,422.95 to CCI, and the Contract was executed by both CCI and the Authority.

10. Also subsequent to the Bid Opening, on June 15, 2000, the Authority and the Engineer conducted a Pre-Construction Meeting with CCI to further discuss the scope and expected progress of the work called for in the Contract Documents, and CCI commenced the work called for in the Contract (the "Work").

11. Over the course of the construction of the Project, a multitude of disputes arising out of the Contract arose between CCI, the Authority, and the Engineer, which caused significant additional costs to CCI, as set forth in greater detail below.

12. In accordance with the Contract Documents, and at all times relevant hereto, the Engineer and its employees, have acted as the authorized agents and representatives of the Authority.

COUNT I: BREACH OF CONTRACT
(Failure to Issue Change Order: Change of Approved Manholes)

13. CCI realleges and incorporates by reference Paragraphs 1 through 12 of its Complaint as if fully set forth herein.

14. In accordance with the Contract Documents and prior to ordering the Manholes to be installed on the Project, on or about June 12, 2000, CCI submitted Shop Drawings to the Engineer for approval of the specific dimensions of the proposed Manholes, and to approve the proposed Manhole supplier, McGill Septic Tank Company.

15. On or about June 14, 2000, the Engineer approved the Shop Drawings and the proposed Manhole Supplier.

16. In reliance on the approvals provided by the Engineer, CCI immediately proceeded to order the approved Manholes, and to contract with the approved supplier.

17. Approximately two (2) weeks later, the Engineer notified CCI that it was withdrawing the approvals, and requested that CCI immediately re-submit Shop Drawings and a proposed supplier in accordance with the Engineer's changed interpretation of the Contract Specifications.

18. In accordance with the Engineer's order, on July 3, 2000, CCI immediately re-submitted Shop Drawings from a different Manhole supplier, namely Fi-Hoff, Inc., and requested that the Authority issue a Change Order to reimburse CCI for the additional costs incurred due to the Engineer's new interpretation of the Specifications.

19. On or about July 12, 2000, the Engineer approved the new Shop Drawings and the new supplier.

20. Due to the delay caused by the Engineer's change in interpretation of the Specifications, and the Engineer's delay in approving the new Shop Drawings and supplier, on July 12, 2000, CCI reiterated its request for a Change Order and requested a twenty-one (21) day extension of the Contract Time.

21. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to adjust the Contract sum or time.

22. The aforementioned change was beyond the scope of the Contract and required CCI to incur substantial additional cost and loss of Contract time.

23. Despite full and complete performance of this change by CCI, CCI is still owed additional compensation and an extension of the contract time.

24. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the Engineer's changed interpretation of the Specifications constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT II: BREACH OF CONTRACT
(Failure to Issue Change Order: Additional Erosion & Sedimentation Controls)

25. CCI realleges and incorporates by reference Paragraphs 1 through 24 of its Complaint as if fully set forth herein.

26. The Contract Documents included specifications requiring the Authority to obtain approval of an Erosion & Sedimentation ("E&S") Control Plan for the Clearfield County Conservation District, at Section 01010, Part 1.07(A)(4).

27. The Contract Documents included an E&S Control Plan under Appendix A.

28. With regard to Filter Fabric Fence, the E&S Control Plan indicated that:

> "Filter Fabric (silt) fence shall be installed where shown on the Contract Drawings or directed by Engineer and/or a Clearfield County Conservation District representative."

29. The Contract Drawings did not show any Filter Fabric Fence, and the Bid Form contained no bid item for Filter Fabric Fence.

30. However, during the course of the work, on or about September 20, 2000, a representative of the Clearfield County Conservation District, acting on behalf of the Pennsylvania Department of Environmental Protection ("DEP"), instructed CCI to install Filter Fabric Fence at a multitude of locations throughout the Project area.

31. On September 21, 2000, CCI related this instruction to the Engineer and requested a Change Order to compensate CCI for the installation of Filter Fabric Fence at the rate of $4.50 per Lineal Foot.

32. On October 2, 2000, CCI amended its request to include an extension of the Contract Time due to the additional work required by the installation of the Filter Fabric Fence.

33. With regard to the application of Mulch to disturbed areas, the E&S Control Plan in the Contract Documents indicated:

(a) "An estimated 3.25 acres shall be disturbed during the construction project ";

(b) "Any disturbed area on which activity has ceased and which will remain exposed for more than 20 days must be stabilized immediately. During non-germinating periods, mulch must be applied at the recommended rates.";

(c) "Apply Hay or Straw mulch at a rate of 3 tons per acre."; and

(d) "Permanent control measures (fertilizer, seed, lime and mulch) shall be placed over final graded areas within 10 days after completion of final grading."

34. As a further result of the instructions received from the Clearfield County Conservation District, the Engineer required CCI to apply mulch daily, and over approximately 25.92 acres, rather than over the estimated 3.25 acres and on a less frequent basis.

35. As a further consequence of the Clearfield County Conservation District and DEP's investigation of the Project and the E&S Control Plan, and in consideration for waiving

any penalties for previous violations, the DEP required the Authority to revise and re-design the E&S Control Plan, and to re-apply for the proper permits to continue construction of the Project.

36. On October 23, 2000, CCI requested a Change Order to compensate CCI for the additional costs for installation of an additional sixty-eight (68) tons of mulch at the price of $350.00 per ton, and an extension of contract time in the amount of twenty (20) days, resulting from the change in the required installation of mulch.

37. On or about November 8, 2000, the Engineer submitted the required revisions to the E&S Control plan that documented the changes to the Contract requiring significant installation of additional silt fence, clay dikes, stream crossings, and rock filter dams to the Project.

38. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to properly adjust the Contract sum or time as a result of the changes in the E&S Control Plan.

39. On or about January 15, 2001, the Engineer issued Change Order No. 7 to reimburse CCI at the rate of $2.50 per lineal foot for silt fence and $300.00 for each rock filter dam, and a one (1) day time extension per every 800 lineal feet of silt fence installed.

40. In correspondence dated February 22, 2001, attached to Change Order No. 7, CCI revised the Change Order and reserved the right to submit a claim for the originally submitted additional costs and time, and eventually, Change Order No. 7 as revised, was executed with CCI's written objections attached, on March 29, 2001.

41. The aforementioned change was beyond the scope of the Contract and required CCI to incur substantial additional cost and loss of Contract time.

42. Despite full and complete performance of this change by CCI, CCI is still owed additional compensation and an extension of the Contract time.

43. The Authority's failure and refusal to issue a Change Order properly adjusting the Contract sum and time, necessitated by the required changes to the E&S Control Plan, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT III: BREACH OF CONTRACT

(Failure to Issue Change Order: Authority's Failure to obtain proper Permit)

44. CCI realleges and incorporates by reference Paragraphs 1 through 43 of its Complaint as if fully set forth herein.

45. The Contract Documents included specifications requiring the Authority to obtain both the DEP's Water Quality Management (Part II) Permit for construction of the sanitary sewers, and the DEP's Bureau of Dams and Waterway Management General Permits for stream crossings, stream encroachment, or jurisdictional wetland encroachment, at Section 01010, Part 1.07(A)(1) and (2), respectively.

46. On or about September 25, 2000, a representative of the DEP inspected the Project and determined that the Authority had not obtained the proper permit to allow construction in the Simeling Run Watershed, Laurel Run Watershed, their tributaries and

wetlands ("Simeling and Laurel Run Watershed Areas") throughout the area of the Project, nor to allow for any stream crossings by construction equipment or for installation of sewer pipeline.

47. On or about October 2, 2000 the DEP representative again inspected the Project and indicated that CCI would be subject to fines and/or penalties if CCI did not cease all work within the Simeling Run and Laurel Run Watershed Areas during the three (3) month period of October 1, 2000 through January 1, 2001, and if CCI did not refrain from crossing any streams with construction equipment or sewer pipeline, or from working anywhere within 50 feet of the Simeling Run and Laurel Run Watershed Areas.

48. As a further consequence of the DEP's investigation, and in consideration for waiving any penalties for previous violations, the DEP revoked the GP-5 Permit and required the Authority to revise and re-design the E&S Control Plan prior to re-applying to obtain the proper permits to continue construction of the Project.

49. As a result of the threats of fines and/or penalties made by the DEP representative, and as a result of the DEP's requirement that the Authority re-design the E&S Control Plan and re-apply for the proper permits, on October 2, 2000, CCI requested a Change Order to extend the Contract Time by ninety-two (92) days, due to the fact that CCI was prohibited from working in certain critical areas of the Project, causing significant and drastic change to the as-bid and as-planned sequence and flow of work, and delaying ultimate completion of the Project.

50. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract time by a Written Amendment, a Change Order, or a Work Change Directive, the

Authority has failed and refused to adjust the Contract time as a result of CCI's efforts to comply with the requirements of the DEP and to avoid fines and/or penalties.

51. The aforementioned orders from the DEP changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

52. Despite CCI's compliance with the DEP's requirements, CCI is still owed additional compensation and an extension of the contract time.

53. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the requirements of the DEP, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT IV: BREACH OF CONTRACT
(Failure to Issue Change Order: Unforeseen and Differing Site Conditions)

54. CCI realleges and incorporates by reference Paragraphs 1 through 53 of its Complaint as if fully set forth herein.

55. The Contract Documents included a set of construction drawings and plans (hereinafter collectively referred to as "the Plans") which pictured both the installation of the work called for in the Specifications, as well as the existing conditions throughout the area where the Project was to be performed (hereinafter referred to as "the Site").

56. The Plans depicted the Physical Condition of the Site, the Subsurface Conditions, and the locations of existing Underground Facilities, including the locations of various existing underground facilities.

57. Prior to submitting its bid, representatives of CCI made their own reasonable investigation of the Site, and carefully examined the Plans, and in reliance on these investigations, submitted CCI's bid proposal.

58. During the course of its work, CCI discovered that the Plans were inaccurate and grossly misrepresented the character of the work, as the actual Physical Conditions, Subsurface Conditions and locations of Underground Facilities were in large part, incorrect, unmarked, unspecified, omitted, and/or inaccurate.

59. More specifically, the Physical Conditions were inaccurate as follows:

a. The Plans failed to depict the existence of various man-made items, equipment, and obstructions to the installation of the work;

b. The Plans failed to depict the existence of wetlands between Manholes AE-3 and AE-4, AE-13 and AE-14, AE-14 and AE-15, and AE-17 and AE-18; and

c. The Plans failed to depict the existence, proximity and condition of salvage items blocking the path of construction from Manholes S-9 to T-1, S-9 to S-10, T-1 to U-1, and T-1 to T-2.

60. More specifically, the Subsurface Conditions were inaccurate as follows:

a. The Plans failed to depict the existence of a ten (10) inch thick slab of concrete immediately beneath the roadway of State Route 2024;

b. The Plans failed to depict the existence of a slab of concrete immediately beneath the roadway of Laurel Run and Arc Road;

c. The Plans failed to depict the existence of brick, concrete, ash pits, and sand pits, between Manholes A-4 and A-5, AE-2 through A-3, and A-3 through A-5;

d. The Plans failed to depict the existence of an unmarked Building Foundation between Manholed AE-1 and AF-1;

e. The Plans failed to depict the existence of an unsuitable trench bottom at Manholes A-32; and

f. The Plans failed to depict the existence, proximity and condition of existing waterline constructed of asbestos material known as transite;

61. More specifically, the Locations of Underground Facilities were inaccurate as follows:

a. The Plans failed to depict the existence of, or accurate subsurface location of existing water lines;

b. The Plans failed to depict the existence of, or accurate subsurface location of existing sewer lines;

c. The Plans failed to depict the existence of, or accurate subsurface location of existing gas lines; and

d. The Plans failed to depict the existence of, or accurate subsurface location of existing telecommunication lines.

62. Because these Conditions and Locations were not accurately depicted, or entirely omitted from the Contract Documents, the character of the Project was significantly changed, as CCI was significantly delayed in the progress of its work, was forced to employ extraordinary measures to circumvent such Conditions, and was forced to incur substantial additional costs not anticipated or reasonably foreseen at the time of bid, to complete the Project.

63. Each time CCI encountered changes and additional work resulting from these Differing Conditions, CCI provided written notice to the Authority and/or the Engineer, and requested that the Contract Price and Time be equitably adjusted.

64. With regard to Changes in the Work, and Differing Conditions, the Contract Documents provided that:

a. The Authority may adjust the Contract price and time by a Written Amendment, a Change Order, or a Work Change Directive, according to Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims"); and

b. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of differing subsurface or physical conditions cause an increase in the Contractor's cost and/or time for performance of the Work, according to Article 4 of the General Conditions of the Contract Documents (entitled "Availability of Lands; Subsurface and Physical Conditions; Reference Points").

65. Despite the existence of the Contract provisions cited in the previous paragraph, the Authority has failed and refused to adjust the Contract price or time as a result of the changes in the Work, or the additional cost and time necessary to circumvent the differing conditions.

66. With regard to Underground Facilities, the Pennsylvania Underground Utility Line Protection Act, 73 P.S. §176, et seq., provides that:

a. Facility Owners shall be members of a One Call System (73 P.S. §177(1));

b. Facility Owners shall, within 2 working days of a One Call request, mark, stake, locate or otherwise provide the position of their underground facilities within 18 inches from the outside wall of the facility, so that a contractor may locate the precise position of the facility (73 P.S. §177(5));

c. Engineers shall request line and facility information prior to the time a final design is completed (73 P.S. §179(2));

d. Engineers shall show the position and type of underground facilities upon their design drawings (73 P.S. §179(3));

e. Engineers shall make reasonable effort to prepare design drawings to avoid damage and minimize interference with underground facilities (73 P.S. §179(4)); and

f. If Contractors comply with the Underground Utility Line Protection Act and are not negligent, they shall incur no obligation to facility owners, operators, owners or other persons (73 P.S. §180(12)).

67. Despite the terms of the Underground Utility Line Protection Act, certain Facility Owners in the Project Area were not members of a One Call System, and/or did not mark, stake, locate or otherwise provide the position of their underground facilities.

68. Despite the terms of the Underground Utility Line Protection Act, the Engineer did not show the position and type of underground facilities in the Contract Documents, failed to exercise reasonable care to otherwise determine the position and type of underground facilities in the Project area, and failed to make a reasonable effort to prepare the design drawings to avoid damage and minimize interference with underground facilities.

69. Despite the terms of the Underground Utility Line Protection Act, CCI incurred a multitude of obligations to Facility Owners and the Authority, and was directed and required to repair and relocate underground facilities without reimbursement.

70. Upon encountering an unmarked or mismarked underground facility, CCI notified the Engineer and the Authority and requested adjustment to the Contract sum and time.

71. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the changes in the Work and the differing conditions, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT V: BREACH OF CONTRACT
(Failure to Issue Change Order: Constructive Fraud)

72. CCI realleges and incorporates by reference Paragraphs 1 through 71 of its Complaint as if fully set forth herein.

73. The Contract Documents included a set of construction drawings and plans (hereinafter collectively referred to as "the Plans") which pictured both the installation of the work called for in the Specifications, as well as the existing conditions throughout the area where the Project was to be performed (hereinafter referred to as "the Site").

74. The Plans and Specifications constituted a positive and material representation by the Authority as to the conditions relative to the Work to be performed pursuant to the Contract.

75. Prior to submitting its bid, representatives of CCI made their own reasonable investigation of the Site, and carefully examined the Plans, but due to time and cost restraints, CCI had no reasonable means to conduct the kind of thorough and independent investigation of the conditions performed by the Authority and Engineer, and reasonably relied on the representations of the Authority and Engineer.

76. However, during the course of the Work, CCI discovered that the Plans were false, misleading, inaccurate and grossly misrepresented the character of the work, as the actual Physical Conditions, Subsurface Conditions and locations of Underground Facilities were in large part, incorrect, unmarked, unspecified, omitted, and/or inaccurate.

77. As a direct result of the false, misleading, and inaccurate Plans and Specifications, the character of the Project was significantly changed, and CCI was significantly delayed in the progress of its work, was forced to employ extraordinary measures to circumvent such Conditions, and was forced to incur substantial additional costs not anticipated or reasonably foreseen at the time of bid, to complete the Project.

78. Each time CCI encountered changes and additional work resulting from these Differing Conditions, CCI provided written notice to the Authority and/or the Engineer, and requested that the Contract Price and Time be equitably adjusted.

79. With regard to Changes in the Work, and Differing Conditions, the Contract Documents provided that:

a. The Authority may adjust the Contract price and time by a Written Amendment, a Change Order, or a Work Change Directive, according to Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims"); and

b. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of differing subsurface or physical conditions cause an increase in the Contractor's cost and/or time for performance of the Work, according to Article 4 of the General Conditions of the Contract Documents (entitled "Availability of Lands; Subsurface and Physical Conditions; Reference Points").

80. Despite the existence of the Contract provisions cited in the previous paragraph, the Authority has failed and refused to adjust the Contract price or time as a result of the changes in the Work, or the additional cost and time necessary to circumvent the differing conditions.

81. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the false, misleading, and inaccurate Plans and Specifications, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT VI: BREACH OF CONTRACT
(Failure to Issue Change Order: PennDOT Storm Sewer Relocation and Installation)

82. CCI realleges and incorporates by reference Paragraphs 1 through 81 of its Complaint as if fully set forth herein.

83. On or about January 16, 2001, it was discovered that the Plans failed to accurately depict the location of an existing storm sewer on Clearfield Street, beyond Manhole A-51.

84. Due to this error in the Plans, the Pennsylvania Department of Transportation ("PennDOT") indicated to CCI that the Authority was required to relocate and replace approximately Four Hundred and Fifty (450) Lineal Feet of storm sewer and catch basins, and CCI notified the Authority and Engineer that this additional work would require a Change Order compensating CCI for the cost of the materials and extending the Contract Time.

85. More specifically, on January 16, 2001, CCI requested a Change Order reflecting an increase in the Contract Sum in the amount of $25.00 per Lineal Foot of pipe, $300.00 per catch basin for labor to install, and a five (5) day extension to the Contract Time.

86. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the changes initiated by PennDOT.

87. The aforementioned changes initiated by PennDOT changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

88. Despite CCI's compliance with the changes initiated by PennDOT and approved by the Authority, CCI is still owed additional compensation and an extension of the contract time.

89. Although the Authority ultimately issued Change Order No. 9, the Change Order failed to properly compensate CCI or to properly extend the Contract time.

90. The Authority's failure and refusal to issue a proper Change Order adjusting the Contract sum and time, necessitated by the changes initiated by PennDOT and approved by the Authority, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT VII: BREACH OF CONTRACT
(Failure to Issue Change Order: Relocation of Manholes A21 through A28)

91. CCI realleges and incorporates by reference Paragraphs 1 through 89 of its Complaint as if fully set forth herein.

92. On or about October 30, 2000, the Authority directed CCI to relocate a segment of sewerline running between Manholes A21 through A28, and issued "Work Directive No. 1," reflecting this change.

93. In response to Work Directive No. 1, CCI notified the Authority and Engineer that this change would require additional work and would require a Change Order compensating CCI for the additional work and extending the Contract Time.

94. More specifically, CCI requested a Change Order reflecting an increase in the Contract Sum and extension to the Contract Time to provide additional temporary mulch stabilization, additional clearing and grubbing, additional surveying, and other work associated with the change.

95. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive,

the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the relocation of the sewerline running between Manholes A21 and A28.

96. The aforementioned relocation changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

97. Despite CCI's compliance with the relocation request, CCI is still owed a Change Order reflecting the additional compensation and extension of the Contract Time.

98. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the relocation of the sewerline running between Manholes A21 and A28, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT VIII: BREACH OF CONTRACT
(Failure to Issue Change Order: Removal of Stockpiled Fill)

99. CCI realleges and incorporates by reference Paragraphs 1 through 98 of its Complaint as if fully set forth herein.

100. The Contract Documents included specifications requiring CCI to stockpile and maintain Five Hundred (500) Cubic Yards of excavated material for use as backfill material, according to Section 02225(2.03)(A)(1).

101. Upon information and belief it is averred that the Authority and/or the Engineer authorized another contractor to remove significant quantities of material from CCI's stockpile,

such that by December, 2000, CCI was required to supply additional material for installation as backfill to the stockpile.

102. On or about December 21, 2000, CCI requested additional compensation for the unauthorized removal of CCI's stockpiled material.

103. Despite the fact that Section 02225(2.03)(A)(2) of the Contract Documents provides that the Authority will provide a Change Order to compensate the Contractor for additional amounts of stockpiled material, the Authority has failed and refused to issue a Change Order to compensate CCI for the additional stockpiled material.

104. The aforementioned supply of additional stockpiled material changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

105. Despite CCI's compliance with Section 02225 of the Contract Documents, CCI is still owed additional compensation and an extension of the Contract Time.

106. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by Section 02225(2.03)(A)(2) of the Contract Documents, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT IX: BREACH OF CONTRACT
(Failure to Issue Change Order: Roadway Repairs)

107. CCI realleges and incorporates by reference Paragraphs 1 through 106 of its Complaint as if fully set forth herein.

108. On or about February 13, 2001, the Authority by and through the Engineer, directed CCI to perform remedial work to certain roadway areas throughout the Site that were failing due to the Engineer's defective design and failure to account for the conditions caused by the freeze and thaw cycle at this time of year, and failure to account for pre-existing conditions.

109. In response to the request to perform remedial work to the roadways, CCI notified the Authority and Engineer that this change would require additional work and would require a Change Order compensating CCI for the additional work and extending the Contract Time.

110. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the required remedial work to the roadways.

111. The aforementioned remedial work changed both the sequence and the scope of the work called for by the Contract and would require CCI to incur substantial additional costs and additional Contract time.

112. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the required remedial work, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT X: BREACH OF CONTRACT
(Failure to Issue Change Order: Elimination of Dumpsite)

113. CCI realleges and incorporates by reference Paragraphs 1 through 112 of its Complaint as if fully set forth herein.

114. During the Mandatory Pre-Bid Conference, the Engineer and Authority notified prospective bidders, including CCI, that 2 dumpsites would be made available to the Contractor, within the Site, to dispose of excess material removed during the course of construction.

115. Based on this notification, CCI did not account for additional costs associated with trucking excess material out of the Site area and disposing of such material.

116. However, after the Contract was awarded to CCI and executed, the Authority arbitrarily eliminated one of the dumpsites designated during the Mandatory Pre-Bid Conference available to CCI.

117. Because this dumpsite was eliminated, CCI incurred substantial additional costs and incurred substantial additional time in trucking excess material out of the Project area and back to the remaining dumpsite.

118. CCI notified the Engineer and Authority of the need for a Change Order to adjust the Contract sum and time, but the Authority refused to provide the same.

119. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of its decision to eliminate a dumpsite.

120. The decision to eliminate a dumpsite changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional costs and additional Contract time.

121. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the additional trucking, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XI: BREACH OF CONTRACT
(Failure to Issue Change Order: Material and Significant Quantity Differences)

122. CCI realleges and incorporates by reference Paragraphs 1 through 121 of its Complaint as if fully set forth herein.

123. Throughout the course of the work, CCI discovered that the estimated quantities on Bid Items supplied in the Contract Documents were significantly inaccurate.

124. In fact, it became apparent that the quantities estimated for Bid Item Nos. 2.E (8" Sewer 12-14' deep), 2.F (8" Sewer 14-16' deep), 4.B (6" Force Main), 5.D (Manhole Drop Connections), 7.A (4" Sewer Laterals), 7.B (6" Sewer Laterals), 11.A (5" BCBC Pavement Replacement), 13 (Concrete Sidewalk/Driveway Replacement), 18 (Stream Crossings), and 20 (Concrete Encasement), were underestimated by as much as 260%, but in each case by more than 15%.

125. During the Pre-Construction Conference, the Authority and Engineer agreed that actual quantity differences of 15% or more would be material and significant, such that new unit prices would be appropriate.

126. Upon discovering these significant quantity differences, CCI notified the Authority and Engineer that these changes would require adjustment to the as-bid unit prices, and reasonable extension of the Contract Time.

127. More specifically, on May 9, 2001, CCI requested a Change Order primarily based on Article 11 of the General Conditions of the Contract Documents which provides for adjustment to the Contract price if "the quantity of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement."

128. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, and despite the fact that Article 11 of the General Conditions specifically addresses errors in the estimated quantities, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the material and significant changes in estimated quantities.

129. The aforementioned material and significant changes in the estimated quantities changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional costs and additional Contract time.

130. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the material and significant changes in estimated quantities, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XII: BREACH OF CONTRACT

(Failure to Issue Change Order: Delay Damages and Loss of Production Costs)

131 The averments set forth in Paragraphs 1 through 130 are incorporated herein by reference as if set forth in full.

132. In submitting its Bid Proposal, and in reliance on the representations made in the Contract Documents and at the Mandatory Pre-Bid Conference, CCI reasonably expected to perform the Work in a logical, productive and sequential manner in accordance with its As-Planned schedule.

133. Furthermore, the Contract Documents impliedly warranted that the Work could be performed in accordance with the Contract Documents, without delay, interference or disruption from the Authority or the Engineer, and in reasonable cooperation with the Authority and Engineer, such that the Work could be substantially completed within 180 days, and finally completed within 240 days of Notice to Proceed, as set forth at Article 3 of the Contract Agreement.

134. Throughout the course of the Work, CCI's performance was continuously delayed, disrupted and interfered with by the Authority and its agent, the Engineer, generally and in the following particulars:

a. Failure to accurately depict or describe the locations of underground utilities throughout the Site;

b. Failure to accurately depict or describe subsurface conditions throughout the Site;

c. Failure to accurately depict or describe physical conditions throughout the Site;

d. Failure to remove man-made and artificial obstructions throughout the Site;

e. Failure to obtain construction right-of-ways, highway occupancy permits, and easements per General Conditions Section 4.01.A in a timely-fashion;

f. Failure to provide reasonably prompt responses to the differing conditions throughout the Site;

g. Failure to provide reasonably prompt responses to CCI's requests for Change Orders for extra work and extensions of Contract Time;

h. Failure to obtain the proper permits to allow CCI to proceed with the Work, prior to issuing Notice to Proceed;

i. Failure to obtain the proper permits in a reasonably prompt manner to allow CCI to proceed with its work after notification that the acquired permits were inadequate;

j. Failure to provide reasonably prompt review of submittals required when the Engineer changed its interpretation of approved manholes as set forth in Count I, above;

k. Failure to provide reasonably prompt information relating to the relocation of segments of sewerline, including but not limited to the relocation of Manholes AG-1 through AE-3;

l. Failure to provide reasonably prompt approval of proposed Subcontractors;

m. Failure to extend the Contract Time as a result of the additional work required by PennDOT, respectively, above;

n. Failure to extend the Contract Time as a result of the additional work required to install the sewerline through and under the various differing subsurface conditions described in Count IV, above;

o. Failure to extend the Contract Time as a result of the additional work required by the E&S Control Changes described in Count II, above;

p. Failure to extend the Contract Time as a result of the additional work associated with finding, repairing, and relocating the unmarked and/or mismarked underground utilities throughout the Site;

q. Failure to extend the Contract Time as a result of CCI's encounter with Transite pipe containing hazardous asbestos material;

r. Failure to extend the Contract Time as a result of the Authority's delay in selecting and approving grinder pumps;

s. Failure to extend the Contract Time as a result of adding additional wye connections, not shown on the Plans;

t. Failure to delineate and provide an on-Site dumpsite;

u. Failure to extend the Contract Time to provide for a "winter shutdown" period;

v. Prohibiting CCI from communicating with the Engineer orally, and requiring all communication to be in writing; and

w. Failure to otherwise cooperate with CCI to ensure the timely and reasonably orderly performance of the Work.

135. As a consequence of the unexpected addition of work, conditions differing significantly from the Contract Documents, and the other various failures as averred in the previous paragraph, the Authority forced CCI to resequence and reschedule its performance and to perform construction activities throughout the winter months, while interfering with and preventing CCI's ability to construct the Work as-planned in a sequential, orderly and continuous manner.

136. Throughout the course of the Work, CCI continuously and repeatedly notified the Authority and its Engineer of the delays and disruptions averred above.

137. Despite proper and repeated notice, and despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may equitably adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to adjust the Contract Sum and Time for delays attributable to the Authority.

138. The aforementioned delays and disruptions changed not only the sequence and the scope of the work called for by the Contract, but significantly extended the actual performance of the Work, and directly and proximately caused CCI to lose productivity, to incur additional job site and home office overhead, to incur extended equipment rental, fuel, and maintenance costs, to reduce CCI's bonding capacity, and to prevent CCI from obtaining additional work.

139. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by its delays and disruptions to the Work, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XIII: BREACH OF CONTRACT
(Misrepresentation)

140 CCI realleges and incorporates by reference Paragraphs 1 through 139 of its Complaint as if fully set forth herein.

141. In preparing the Contract Documents and soliciting bids based upon the same, the Authority had a duty to disclose all relevant information within its possession to bidders, including CCI, which would impact the performance of the Work.

142. Prior to the execution of the Contract, the Authority, through its acts, omissions, conduct, words and assertions as chiefly set forth in the Contract Documents and in the Mandatory Pre-Bid Conference, negligently, recklessly, and/or knowingly and intentionally concealed material facts concerning the Work from the bidders, including CCI.

143. Specifically, the Authority withheld its superior knowledge and failed to disclose:

a. The incomplete status of the easements and right-of ways necessary for performance of the Work;

b. The location and presence of the concrete under State Route 2024;

c. The location and presence of the concrete under Laurel Run and Arc Road;

d. The location and presence of the brick, concrete, ash and sand pits associated with an abandoned subsurface brickyard;

e. The location and presence of subsurface and abandoned concrete foundations;

f. The location and presence of protected wetlands in the Site;

g. The inadequate status of the permits required for performance of the Work;

h. The existence of a protected wild trout stream and watershed area, namely Simeling Run and Laurel Run Watershed Areas, through the Site;

i. The inadequate status of the E&S Control Plan included in the Contract Documents;

j. The lack of 2 dumpsites;

k. The various aspects of the Work which were required to be changed due to PennDOT requirements, including relocation of storm and sanitary sewerline, and additional work associated with PennDOT paving requirements;

l. The inaccurate and/or omitted depiction of underground utilities throughout the Site; and

m. The necessity for PennDOT approved manholes as averred above, in Count I.

144. CCI had no knowledge that the Authority would fail to disclose the material facts averred in the preceding paragraph, and instead, reasonably relied upon the representations made by the Authority in preparing its Bid Proposal and executing the Contract at its Bid price.

145. The Authority knew or should have known that the misrepresentation of the various material facts averred above would be relied upon by bidders, including CCI, in formulating Bid Proposals, and that such misrepresentation would result in grossly inaccurate Bid Proposals.

146. CCI reasonably relied to its detriment upon the misrepresentation of the material facts associated with the Work as contained in the Contract Documents and the Mandatory Pre-Bid Conference.

147. As a direct and proximate consequence of the misrepresentations and omissions made by the Authority, and the Authority's failure to disclose its superior knowledge, CCI suffered significant damages in the form of additional costs, additional and lost labor productivity, and extended jobsite and home office overhead.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XIV: BREACH OF CONTRACT
(Contract Recission: Cardinal Change)

148. The averments set forth in Paragraphs 1 through 147 are incorporated herein by reference as if set forth in full.

149. Due to the defective nature of the Contract Documents, and the materially different conditions encountered by CCI during the course of the Work, the actual character of CCI's scope of work and method and manner of performance (the "As-Built Scope of Work") was drastically altered from that contemplated by the as-bid Contract Documents.

150. Throughout the course of the Work, CCI continuously and repeatedly notified the Authority of the multitude of changes and the nature of the As-Built Scope of Work, nonetheless, the Authority compelled CCI to continue performance despite its knowledge of the drastically changed As-Built Scope of Work.

151. As a result of the Authority's decision to compel performance of the As-Built Scope of Work, without adequate compensation or reasonable time extension, the Authority materially breached the Contract entitling CCI to contract rescission, and payment on the basis of restitutional recovery of CCI's actual costs in labor and materials, with reasonable overhead and profit.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaccton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XV: QUANTUM MERUIT

152. CCI realleges and incorporates by reference Paragraphs 1 through 151 of its Complaint as if fully set forth herein.

153. At the request of the Authority, and on the Authority's express promise to pay the reasonable value thereof (based on Article 10 of the General Conditions to the Contract), CCI rendered certain construction services, performed labor and furnished materials and equipment required for the installation of approximately 48,570 Lineal Feet of 6 Inch diameter and 8 Inch

diameter gravity sewer main pipeline, approximately 2,660 Lineal Feet of 6 Inch diameter force main sewer pipeline, 6,400 Lineal Feet of sewer laterals, and related appurtenances, in the Borough of Wallaceton, and Township of Boggs, in Clearfield, Pennsylvania.

154. As a result of CCI's performance of the services discussed in the preceding paragraph and the acceptance thereof by the Authority, the Authority received the benefit of services and materials having a fair and reasonable value far in excess of CCI's Bid Proposal.

155. Despite repeated demands, the Authority has failed and refused to compensate CCI for the full, fair and reasonable value of the benefit it received, and has been unjustly enriched at the expense of CCI.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaccton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XVI: BREACH OF CONTRACT
(Failure to Issue Change Order: Contract Time Extension)

156. The averments set forth in Paragraphs 1 through 155 are incorporated herein by reference as if set forth in full.

157. Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, for additional or changed work or delays beyond the Contractor's control.

158. As set forth in the preceding Counts hereof, CCI encountered a multitude of delays, changes, and extra work beyond CCI's control, and continuously and repeatedly requested that the Authority extend the Contract Time.

159. However, the Authority has unreasonably refused to extend the Contract Time.

160. The Authority's failure to provide a reasonable time extension constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XVII: BREACH OF CONTRACT
(Improper Assessment of Liquidated Damages)

161. The averments set forth in Paragraphs 1 through 160 above are incorporated herein by reference as if set forth in full.

162. The Contract Documents required CCI to obtain Substantial Completion of the Work within 180 days of the Notice to Proceed, and Final Completion of the Work within 240 days of Notice to Proceed, subject to equitable adjustment in the Contract Time pursuant to Article 10 of the General Conditions of the Contract Documents.

163. Despite a multitude of repeated and continuous requests to extend the Contract Time in a reasonable fashion, and to provide a winter shutdown as promised during the Mandatory Pre-Bid Conference, the Authority failed and refused to do so, in material Breach of the Contract.

164. Regardless, CCI made extraordinary efforts to perform the Work and complete the Project expeditiously.

165. Throughout the course of its performance, CCI has applied for payments on a monthly basis, in accordance with Article 5 of the Contract, and Article 14 of the General Conditions of the Contract Documents.

166. Article 3 of the Contract provides that the Authority may assess Liquidated Damages in the amount of $800.00 per day for each day that CCI failed to achieve Substantial Completion beyond the Substantial Completion deadline, and provides that the Authority may collect Liquidated Damages in the amount of $700.00 per day for each day that CCI failed to achieve final completion beyond the Final Completion deadline.

167. Based on information received, it is believed, and therefore averred that the Authority has proceeded to assess liquidated damages of $800.00 per day, beginning December 19, 2000, and asserted its right to assess an additional $700.00 per day, beginning on February 14, 2001, despite the Authority's failure and refusal to provide a reasonable extension of the Contract Time.

168. The Authority's failure and refusal to reasonably extend the Contract Time constitutes a material Breach of Contract which voids any claim for Liquidated Damages.

169. Additionally, the Authority has breached the Contract by electing to assess a total of $1500.00 per day, beginning on February 14, 2001, despite the clear language of the Contract which, even if enforceable, permits Liquidated Damages of only $800.00 per day during the period occurring after the Substantial Completion deadline, and of only $700.00 per day, for each day after an 60 day period permitted to achieve Final Completion.

170. Furthermore, Article 3 of the Contract is void as a matter of law, as the Liquidated Damages provided for therein clearly constitute a penalty bearing no relation to any actual damages suffered by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XVIII: BREACH OF CONTRACT
(Failure to Release Retention)

171. The averments set forth in Paragraphs 1 through 170 above are incorporated herein by reference as if set forth in full.

172. On or about April 23, 2001, the Engineer certified that the Work was Substantially Complete as of "4/18/00," which upon information and belief was to signify that the Work was Substantially Complete as of April 18, 2001.

173. Subsequently, CCI executed a Certificate of Substantial Completion noting that it did not waive its right to contest the date established for Substantial Completion by the Engineer.

174. On or about April 23, 2001, in conjunction with issuing the Certificate of Substantial Completion and pursuant to Article 5.2 of the Contract, the Engineer certified each and every uncompleted item of work with a reasonable cost of completion.

175. Prior to Substantial Completion, with the Engineer's recommendation, the Authority was authorized to withhold 10% of the value of Work completed, until 50% of the Work was completed, at which time the Authority could withhold no more than 5% of the value of the Work completed, pursuant to Article 5.2.1 of the Contract.

176. After Substantial Completion, the Authority was not authorized to withhold any more than 1.5 times the amount of each and every uncompleted item of work, as certified by the Engineer, pursuant to Article 5.2 of the Contract.

177. Since the Engineer certified each and every uncompleted item of work on April 23, 2001, CCI has performed and completed each and every item set forth in the Engineer's certification of April 23, 2001.

178. Despite repeated requests, the Authority has refused to release any further retention and has indicated that it will arbitrarily continue to withhold 10% of the value of the Work, despite clear language in the Contract to the contrary.

179. The Authority's failure and refusal to make payment in accordance with the terms of the Contract, and arbitrary withholding of 10% retention constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XIX: BREACH OF CONTRACT
(Failure to Conduct Final Inspection)

180. The averments set forth in Paragraphs 1 through 179 above are incorporated herein by reference as if set forth in full.

181. Upon completing the Work in full, CCI provided repeated written requests to the Engineer to conduct a Final Inspection of the Work, in accordance with Article 14.06 of the General Conditions to the Contract Documents (entitled, "Final Inspection").

182. Despite CCI's repeated requests, the Engineer and Authority have refused to conduct a Final Inspection, but instead have continued to delay and extend the close-out of the Project.

183. The Authority's failure and refusal to conduct a Final Inspection constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XX: BREACH OF CONTRACT
(Failure to Properly Process Payment Applications)

184. The averments set forth in Paragraphs 1 through 183 above are incorporated herein by reference as if set forth in full.

185. Throughout the course of its performance, CCI has applied for payments on a monthly basis, in accordance with Article 5 of the Contract, and Article 14 of the General Conditions of the Contract Documents.

186. Despite CCI's timely application for payment, the Authority has failed and refused to make payment in full, has arbitrarily reduced and modified CCI's pay applications, and continues to withhold both the balance of payment for work completed and excessive retention.

187. The Authority's failure and refusal to make payment in full, arbitrary reduction and modification of pay applications, and withholding of both the balance of payment for work completed and excessive retention constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE
(Statutory Interest)

188. The averments set forth in Paragraphs 1 through 187 above are incorporated herein by reference as if set forth in full.

189. The Authority is a "Governmental Agency" as that term is defined in Part II of the Commonwealth Procurement Code, 62 Pa. C.S.A. §3102.

190. As a Governmental Agency, the Authority is bound by the provisions of Part II, Chapter 39, "Contracts for Public Works." 62 Pa. C.S.A. §§3901-3942.

191. The Commonwealth Procurement Code provides, in relevant part, the following:

a. A Governmental Agency shall pay a contractor strictly in accordance with the contract (Section 3932(a));

b. If any progress payment is not made when due, the Governmental Agency must pay interest on the amount due, computed at the rate determined by the Secretary of Revenue for interest payments on overdue taxes or the refund of taxes (Section 3932(c)); and

c. If final payment is not made when due, the Governmental Agency must pay interest on the amount due, at the rate of 10% per annum, or is the agency has issued bonds to finance the project, then at the rate of the bond issue, whichever is less, but in no event less than the legal rate of interest (Section 3941(b)).

192. As alleged above, the Authority has failed and refused to pay CCI in strict accordance with the Contract, has failed to make payment of progress payments when due, and has failed to make final payment when due.

193. Because the Authority has failed to pay in accordance with the terms of the Commonwealth Procurement Code, CCI is entitled to statutory interest.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE
(Penalty, Attorney Fees and Expenses)

194. The averments set forth in Paragraphs 1 through 193 above are incorporated herein by reference as if set forth in full.

195. The Authority is a "Governmental Agency" as that term is defined in Part II of the Commonwealth Procurement Code, 62 Pa. C.S.A. §3102.

196. As a Governmental Agency, the Authority is bound by the provisions of Part II, Chapter 39, "Contracts for Public Works." 62 Pa. C.S.A. §§3901-3942.

197. The Commonwealth Procurement Code provides, in relevant part, the following:

a. If a Governmental Agency fails to properly pay a contractor, the contractor is entitled to a penalty equal to 1% per month of the amount that was withheld in bad faith (Section 3935(a)); and

b. If it is determined that the Governmental Agency acted in bad faith, the contractor may be awarded a reasonable attorney fee together with expenses (Section 3935(b)).

198. At all times throughout the performance of the Work, the Authority has exhibited bad faith towards CCI generally, and in the following particulars:

a. In arbitrarily withholding payment from CCI;

b. In vexatiously withholding payment from CCI;

c. In disregarding the recommendations of the Engineer to make payment;

d. In intentionally withholding and failing to disclose information including the incomplete status of the easements and right-of-ways necessary for performance of the Work, the location and presence of the concrete under State Route 2024, the location and presence of the concrete under Laurel Run and Arc Road, the location and presence of the brick, concrete, ash and sand pits associated with an abandoned subsurface brickyard, the location and presence of subsurface and abandoned concrete foundations; and the location and presence of protected wetlands in the Site;

e. In interpreting the requirements of the specifications in an unreasonable and oppressive manner;

f. In failing to obtain the proper easements, right-of-ways, and permits prior to issuing Notice to Proceed and commencing the Contract Time, and in failing to obtain the same promptly during the course of the Work and in a manner not to interfere with the sequence and performance of the Work;

g. In failing to provide 2 dumpsite;

h. In directing CCI to perform various aspects of work required by PennDOT without providing compensation;

i. In failing to accurately depict or locate the underground utilities throughout the Site;

j. In failing to provide a "winter shutdown" as promised during the Mandatory Pre-Bid Conference, and

k. In discriminating against CCI on the basis of sex, as alleged in greater detail below.

199. Because the Authority has withheld payment to CCI in bad faith, arbitrarily and vexatiously, CCI is entitled to penalty, reasonable attorney fees and expenses.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XXII: CIVIL RIGHTS ACTION
(Equal Protection Clause/Sex Discrimination)

200. The averments set forth in Paragraphs 1 through 199 above are incorporated herein by reference as if set forth in full.

201. This Count is brought pursuant to Title 42 of the United States Code, Section 1983.

202. Continental Construction, Inc., is a "person" entitled to the protections of the Fourteenth Amendment to the United States Constitution.

203. CCI has been a Woman-owned Business Enterprise ("WBE") since 1995, and has been certified as such by the Pennsylvania Department of Transportation and Department of General Services.

204. Throughout the course of its dealings with CCI, the Authority and its male agents while acting within the scope of their authority, under color of law, and as a matter of Authority policy and/or custom, consistently, willfully and purposefully discriminated against CCI with malice, on the basis of sex, in that:

a. CCI was treated differently than the other contractor, a non-WBE, performing work for the Authority at the same time and at the same Site, as the other contractor was determined to be Substantially Complete prior to its work being fit for its intended use, as the other contractor was provided a "winter shutdown," as the other contractor was permitted to use alternate materials, as the other contractor's subcontractors were approved without delay, and as the other contractor was permitted to communicate with the Engineer orally;

b. The Engineer refused to communicate with the female-owner of CCI, other than in writing, and directed the female-owner of CCI to put all communications in writing;

c. The Authority and its male agents issued oral comments indicating a general disrespect for women, and especially women involved in the construction industry;

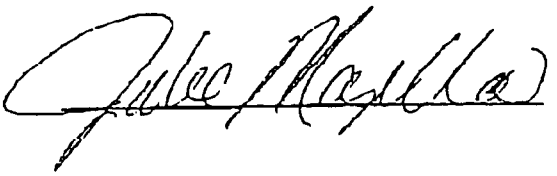
d. The Authority and its male agents issued oral comments reflecting doubt that CCI could perform the scope of work set forth in the Contract due to the fact that its Owner is female;

e. The Authority and its male agents attempted to intimidate and "bully" the female owner of CCI; and

f. In corresponding with CCI in writing, the Authority and its male agents repeatedly referred to the female owner of CCI as "MS Marzella."

VERIFICATION

I, Julee Marzella, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. These statements are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



205. As a person entitled to the protections of the Fourteenth Amendment to the United States Constitution, CCI is entitled to equal protection and treatment from governmental or municipal agencies, including the Authority.

206. Because the Authority failed to treat CCI equally, and as otherwise alleged above, CCI's performance of Work was delayed, disrupted, and CCI was forced to work out-of-sequence, without the cooperation of the Authority or Engineer, all of which caused CCI to incur additional costs and damages as set forth throughout this Complaint.

207. Because the Authority failed to treat CCI equally, and as otherwise alleged above, the Authority has violated the equal protection clause of the Fourteenth Amendment to the United States Constitution, and is therefore liable pursuant to 42 U.S.C. §1983.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus punitive damages, reasonable attorney fees, and costs of this suit

A JURY TRIAL IS DEMANDED

Respectfully Submitted:

Kevin J. McKeon
Fluke, Weiers & Schmit, P.C.
1400 The Bank Tower
Pittsburgh, PA 15222
Attorney for the Plaintiff

June 14, 2000

Continental Construction, Inc.
P.O. Box 126
Johnsonburg Road
Ridgeway, PA 15853

Attention: Ms. Julee M. Marzella, Secretary/Treasurer

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01 : Sanitary Sewer
Shop Drawing Submittals

Dear Ms. Marzella:

Enclosed you will find your shop drawing submittals numbered1 to 11. As per your request, we have reviewed and take no exceptions to these submissions. Please be advised that this review was done as courtesy, and these submissions will not be considered binding until the Agreement has been executed and the Notice to Proceed has been issued.

If you have any questions or require further information, please contact our office.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manger

TAG:mm

Enclosures

Cc: File 3334-2-Contract 2000-01

K:\PROJECTS\3334\3334-2\Contract 01\docs\letter\Shop Dwg rvw 1-11.doc

EXHIBIT "A" to Complaint

Pennsylvania Department of Environmental Protection

208 West Third Street, Suite 101
Williamsport, PA 17701-6448

March 22, 2000

Northcentral Regional Office

Fax 570-327-3565

Richard J. Shimmel, Chairman
Wallaceton-Boggs Municipal Authority
P.O. Box 97
West Decatur, PA 16878

Re: General Permit Acknowledgment
DEP General Permit File No. GP051700501
and GP041700501
Wallaceton Borough and Boggs Township
Clearfield County

Dear Mr. Shimmel:

This will acknowledge receipt of your notification (copy enclosed) and registers your use of a General Permit issued by the Department of Environmental Protection. You are responsible for assuring the work is done in accordance with the drawings and conditions contained in the General Permit. You may proceed with your project after making the required notifications stipulated in the General Permit and securing all other approvals that may be necessary.

Also enclosed is your Federal Clean Water Act Section 404 authorization in the form of the Pennsylvania State Programmatic General Permit (PASPGP-1).

If you have any questions, please call Donald Ericson at 570-321-6561.

Sincerely,

F. Alan Sever

F. Alan Sever, P.E.
Chief, Soils & Waterways Section
Water Management Program

Enclosure

cc: Pa. Fish & Boat Commission, Northcentral Regional Office
Clearfield County Conservation District
U.S. Army Corps of Engineers, Baltimore District
Andrew S. Levine, P.E.
File

FAS/DE/bls

EXHIBIT "B" to Complaint

EXHIBIT C

ACKNOWLEDGED
DATE: 3/22/00
GP 05170501

Notification to Use
BDWM-GP-5
Utility Line Stream Crossings

I/We, Wallaceton-Boggs Municipal Authority (owner name(s)), hereby notify the Bureau of Dams and Waterway Management of our intent to use Sample Drawing No. 1 to install

42,000 L.F. of Gravity Santiary Sewer, 8" PVC pipe
(size and description of utility line)

across/along Laurel Run, un-named streams, and wetland
(name of stream, body of water, or wetland)

at ~~approx~~ various points - see attached table
(describe location)

in Boggs Township & Wallaceton Borough (municipality) Clearfield (county)

I/We have attached a LOCATION MAP similar to that shown on the sample drawings indicating where the utility line will be installed.

I/We certify that a copy of this notification was sent this day 12/09/99 (date)

to Boggs Township & Wallaceton Borough (municipality), and Clearfield (county) in which the work will be performed.

Signed: [signature]
(owner or authorized representative)

P.O. Box 97
(owner address)

West Decatur, PA 16878

(814) 243 - 3626
(owner telephone number)

I/We hereby notify the Bureau that BDWM-GP-8, Temporary Road Crossing will also be utilized during the installation of the utility line.

Signed: N/A

Send to

WALLACETON – BOGGS SANITARY SEWER CONSTRUCTION PROJECT
DECEMBER 1999

RECEIVED
MAR 8 2000
WATER MGMT/DEP

TABLE A – STREAM CROSSINGS

Crossing No.	Stream Name	Sheet No.	Length of Crossing L.F.	Description
1	Laurel Run	5	30	90' west of LR 17122 and 190' north of Church Hill Road. 8" PVC gravity sewer between MH A-8 and MH A-9
2	Unnamed Tributary to Laurel Run	5	15	480' east of LR 17122 and 60' south of Boggs Twp. Bldg. 8" PVC gravity sewer between MH A-4 and MH A-5
3	Unnamed small stream	14	20	200 ' west of SR 0322 and 210' east of Arc Road (T-676) 8" PVC gravity sewer between MH A-37 and MH A-38
4	Unnamed small stream	16	35	870' south of Reed Street and 200' east of SR 2029 8" PVC gravity sewer between MH A-46 and MH A-47.
5	Unnamed small stream	16	35	600' south of Reed Street and 260' east of SR 2029 8" PVC gravity sewer between MH A-47 and MH D-1

Total = 135 ft. < 250 ft – OK to use SPGP

WALLACETON – BOGGS SANITARY SEWER CONSTRUCTION PROJECT
DECEMBER 1999

TABLE B – WETLAND CROSSINGS

Crossing No.	Wetland Designation	Sheet No.	Length of Crossing L.F.	Description
1	W	4	250 ✓	170' NE of Company Road 8" PVC gravity sewer between MH A-2 and MH A-3
2	V	4	30	580' NE of Company Road 8" PVC gravity sewer between MH A-1 and MH A-2
3	D	12	90	65' SW of SR 0322 and 260' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-32 and MH A-33
4	D	12	15	65' SW of SR 0322 and 360' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-32 and MH A-33
5	D	12	20	50' SW of SR 0322 and 400' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-31 and MH A-32
6	B	13	10	160' SW of SR 0322 and 700' NW of T-676 8" PVC gravity sewer between MH A-35 and MH A-36
7	H	15	100	215' East of SR 2029 8" PVC gravity sewer between MH A-43 and MH A-45
8	G	15	20	170' East of SR 2029 8" PVC gravity sewer between MH A-45 and MH A-46
9	F	15	25	170' East of SR 2029 8" PVC gravity sewer between MH A-45 and MH A-46
10	H	21	130	165' East of SR 2029 8" PVC gravity sewer between MH A-44 and MH B-1
11	P	28	20	40' SE of Reed Street 8" PVC gravity sewer between MH S-1 and MH S-2
12	Q	28	95	80' NW of Reed Street 8" PVC gravity sewer between MH S-3 and MH S-4
13	U	28	25	570' NW of Reed Street 8" PVC gravity sewer between MH S-3 and MH S-4
14	S/T	29	420 ✓	840' NW of Reed Street 8" PVC gravity sewer between MH S-5 and MH S-7
15	R	29	75	1300' NW of Reed Street 8" PVC gravity sewer between MH S-6 and MH S-8
16	V	38	125	590' NE of Company Road 8" PVC gravity sewer between MH AC-1 and MH A-1

Total = 1450 ft × 20 ft (easmt) = 29000 ft² ∠ 1 acre (SPGP ok.)

300 × 150 = 45000

3630-PM-WQ0503 Rev. 7/98

FOR DEPT. USE ONLY

ACKNOWLEDGED:
DATE 3/22/00
GP 8417005 01

EXHIBIT C

NOTIFICATION TO USE
BDWM-GP-4
Intake and Outfall Structures

I/We, Wallaceton-Boggs Municipal Authority
(owner name(s))

hereby notify the Department of Environmental Protection of our intent to use

Drawing No. 3 to install a Penn DOT Type D-W

outfall structure
(description of intake or outfall structure)

across/along Laurel Run at a point approximately 600 feet east of L.R. 17122
(name of stream)

in West Decatur
(describe location)

in Boggs Township (municipality), Clearfield (county).

I/We have attached a LOCATION MAP similar to that shown on Drawing No. 1 indicating where the intake or outfall structure will be installed.

I/We certify that a copy of this notification was sent this day December 9, 1999 (date) to

Boggs Township (municipality) and Clearfield (county).

where the work will be performed.

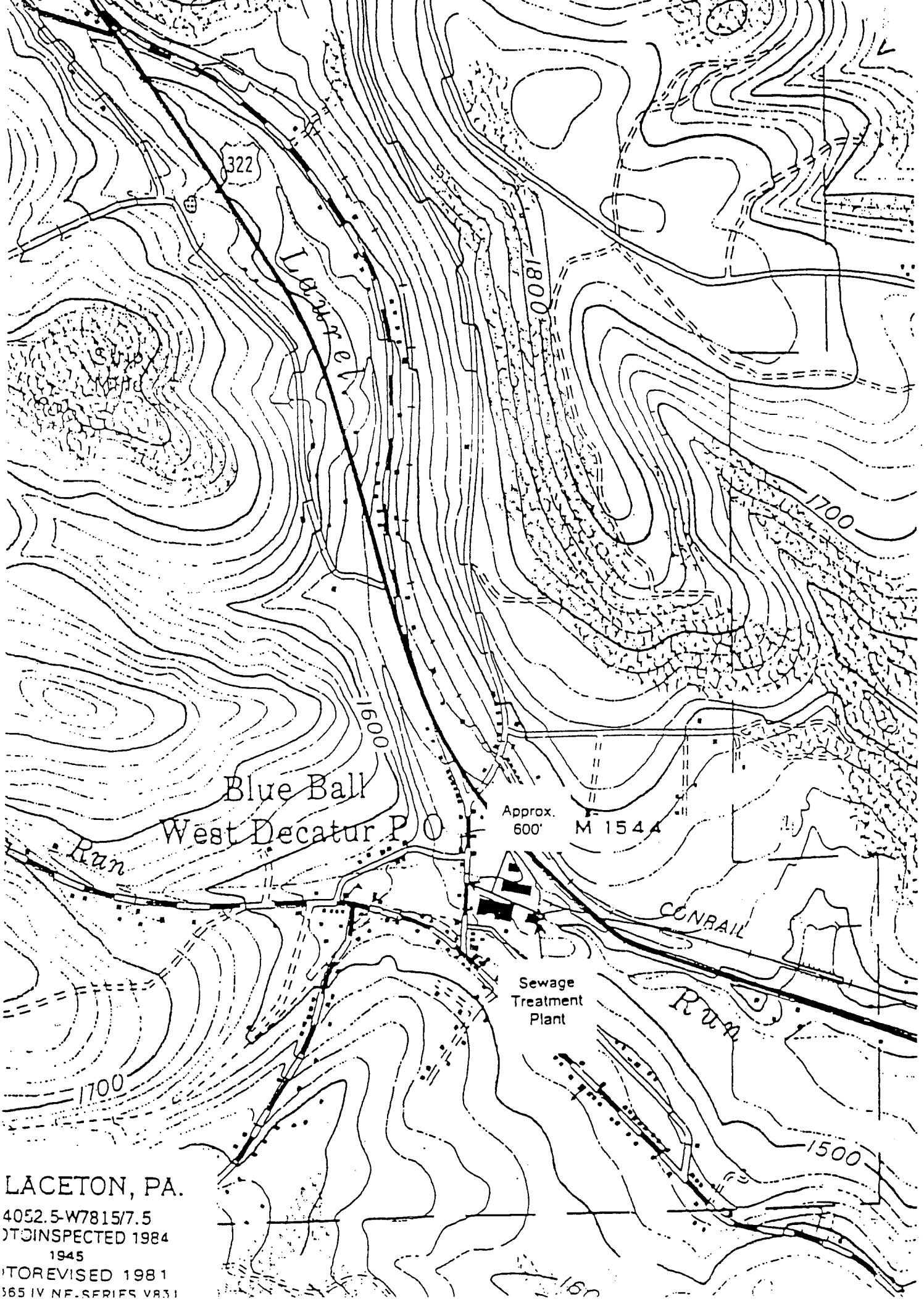
Signed: [signature]
(owner or authorized representative)

P.O. Box 97
(owner address)

West Decatur, PA 16878

(814) 342-3626
(owner telephone number)

Send to one of the addresses on "Exhibit B" or the "County Conservation Districts" List.


322
Laurel
1800
1700
1600
Blue Ball
West Decatur P.O.
Approx.
600'
M 154 A
Run
CONRAIL
Sewage
Treatment
Plant
Run
1700
1500
LACETON, PA.
4052.5-W7815/7.5
OTOINSPECTED 1984
1945
ITOREVISED 1981
365 IV NE-SERIES V831

PENNSYLVANIA STATE PROGRAMMATIC GENERAL PERMIT
PASPGP-1
DECEMBER 1995

TO WHOM IT MAY CONCERN:

Upon the recommendation of the Chief of Engineers, and under the provisions of Section 404 of the CWA, as amended, and Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), the Secretary of the Army hereby authorizes the discharge of dredged, excavated, or fill material or structures into waters of the United States, including wetlands. These discharges and structures must comply with all the terms and conditions identified in this SPGP.

It has been determined that the project as authorized by the PA Department of Environmental Protection (PADEP) Authorization GPC5170050 1 qualifies for the PA SPGP-1. Accordingly, you are authorized to undertake the activity pursuant to: T GP041700501

1. Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

2. Section 404 of the Clean Water Act (33 U.S.C. 1344).

You are authorized to perform work in accordance with the terms and conditions specified below.

For an activity involving a structure or discharge of dredged, excavated, or fill materials into waters of the United States to be authorized by this SPGP, it must meet the following requirements and conditions:

1. Proper maintenance. Any fill or work authorized shall be properly maintained, including maintenance to ensure public safety.

2. Erosion and siltation controls. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.

3. Aquatic life movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

4. Equipment. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance, including avoiding the use of such equipment, if possible.

5. National Wild and Scenic Rivers. Activities which occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system are not authorized by this SPGP. These designated rivers include:

(a) The Upper Delaware Scenic and Recreational River beginning at Hancock, New York, and continuing 73.4 river miles to Mill Rift, Pennsylvania.

(b) The Middle Delaware Scenic and Recreational River as it flows through the Delaware Water Gap National Recreation Area.

The Study Rivers include:

(a) The Lower Delaware River beginning seven river miles north of Belvidere, New Jersey, continuing to Washington Crossing, Pennsylvania, including Cooks Creek, Tinicum Creek and Tohickon Creek.

(b) The White Clay Creek watershed including all of its tributaries.

6. Tribal rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. Endangered Species. If the proposed activity may affect a Federal listed species or a species proposed for listing or their critical habitat, a District Engineer must initiate consultation with FWS or NMFS in accordance with the Federal Endangered Species Act (ESA) prior to authorization of the activity under the PASPGP-1. No activity is authorized under the PASPGP-1 which is likely to, individually or cumulatively, jeopardize the continued existence of a threatened or endangered

species or a species proposed for such designation, as identified under the ESA, or which is likely to destroy or adversely modify the critical habitat of such species identified under the ESA. If an activity is authorized under the PASPGP-1, and during construction a Federal listed species or critical habitat is found to be present, all work must cease and the permittee must notify the Corps of Engineers. The PASPGP-1 authorization is suspended until the conclusion of Section 7 consultation in accordance with the ESA. The PASPGP-1 authorization may be revoked for that specific project if the species or critical habitat is adversely affected. If it is determined that there will be no adverse effect or that an adverse effect can be mitigated, the PASPGP-1 will be reinstated for that specific activity with any appropriate mitigation conditions. Furthermore, persons have an independent responsibility under Section 9 of the ESA to not engage in any activity that would result in a "take" of a Federal listed species.

8. Cultural Resources. No activity is authorized under the PASPGP-1 which may adversely affect cultural resources listed or eligible for listing in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act are met. The applicant must notify the State Historic Preservation Officer (SHPO), at the Pennsylvania Historical and Museum Commission (PHMC), using the PADEP Historical Resources Determination Notice Form and include a copy of the form as proof of notification in their application. Upon the discovery of the presence of a previously unknown historic or archaeological site, all work must cease and the permittee must notify the SHPO and the Corps of Engineers. The SPGP authorization is suspended until it is determined, through the Section 106 consultation process, whether the activity will have an adverse effect on the cultural resource. The authorization under the PASPGP-1 may be reactivated or modified, through specific conditions if necessary, if it is determined that the activity will have no adverse effect on the cultural resource. The PASPGP-1 authorization may be revoked for the specific activity if the cultural resource will be adversely affected.

9. Water supply intakes. No discharge of dredged, excavated, or fill material or structure may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization, unless Corps approved and appropriate mitigation measures are to be implemented which will protect the water supply.

10. Shellfish production. No discharge of dredged, excavated, or fill material or structure may occur in areas of concentrated shellfish production, unless the discharge is directly related to an authorized shellfish harvesting activity.

11. Suitable material. No discharge of dredged, excavated, or fill material or structure may consist of unsuitable material or solid waste (e.g., trash, debris, car bodies, etc.) and all material discharged must be free from toxic pollutants in toxic amounts pursuant to Section 307 of the CWA.

12. Mitigation. Discharges of dredged, excavated, or fill material or structures into waters of the United States must be avoided and minimized to the maximum extent practicable at the project site. Once avoidance and minimization of unavoidable adverse impacts has been demonstrated, compensation mitigation may be used to offset unavoidable adverse impacts.

13. Spawning areas. Excavation, discharges or structures in spawning or nursery areas shall not occur during spawning seasons. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of the year.

14. Obstruction of high flows. To the maximum extent practicable, discharges or structures must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

15. Adverse impacts from impoundments. If the discharge or structures creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, including impacts to wetlands, shall be minimized to the maximum extent practicable.

16. Waterfowl breeding areas. Discharges or structures in breeding areas of migratory waterfowl must be avoided to the maximum extent practicable.

17. Removal of temporary fills. Any temporary fills or structures must be removed in their entirety and the affected areas returned to their preexisting elevation.

18. Inspections. The permittee shall permit a District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to ensure that the work is being performed in accordance with all the terms and conditions of the PASPGP-1.

19. Single and Complete Projects. The PASPGP-1 shall not be used for piecemeal work and shall be

applied to single and complete projects. All components of a single project shall be treated together as constituting one single and complete project. All planned phases of multi-phased projects shall be treated together as constituting one single and complete project. For purposes of this condition, all previously authorized phases of multi-phased projects will remain authorized, unless expired, and any additional planned phases will be evaluated for authorization, cumulatively with the previously authorized phases as a single and complete project. This general permit shall not be used for any activity that is part of an overall project for which an individual permit is required.

20. False and Incomplete Information. If any of the information contained in the Pennsylvania/Corps Joint Permit Application, PADEP General Permit registration, PADEP Environmental Assessment and/or plans is found to be in error, falsified, and/or incomplete, the PASPGP-1 authorization may be subject to modification, suspension, or revocation in accordance with 33 CFR 325.7.

21. Section 404(b)(1) Guidelines. No activity may be permitted under the PASPGP-1 that is not in full conformity with the Section 404(b)(1) Guidelines. The Corps is responsible for insuring compliance with the Guidelines.

22. Agricultural activities. For Pennsylvania waivers 7 or 8 to qualify for the PASPGP-1, the activities must be part of an established (i.e., on-going) farming, silviculture, or ranching operation. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land.

23. Expiration Date. This authorization is valid for the same period as the project specific PADEP authorization, not to exceed three years; and shall not exceed three years for PADEP General Permits.

By Authority of the Secretary of the Army:

Colonel Randall R. Inouye, P.E.
Baltimore District Engineer

Lieutenant Colonel Robert P. Magnifico
Philadelphia District Engineer

Colonel Stephen B. Massey
Pittsburgh District Engineer

SWEETLAND ENGINEERING & ASSOCIATES, INC.
600 SCIENCE PARK ROAD
STATE COLLEGE, PA 16803
PHONE: (814) 237-6518
FAX: (814) 237-1488

FIELD SPEED MEMO

TO: Co-To-Coal Construction

FROM: Ron Lenic (SEA)

DATE: 10-30-00

SUBJECT: 1st Moving A Line MH-21 to MH-28

SEA JOB #: 3334-2 CONTRACT NO. 2000-01

DESCRIPTION: This is a work direction to move manhole along A Line to MH 21 to MH-28 away from the roadway a maximum of 10' to be directed by Sng's field Representative. The Contractor is to Remove the 163' of Line that was already placed out of MH-20. The work direction is to show a Credit Due for the Saw Cutting of the road. This is being issued to credit the owner as the contractor is not prepared for Saw Cutting operations as specified. This will be paid by Unit Prices of the bid Documents.

Engineer Representative: Ron A Lenic

Contractor Representative:

Owner Representative: Richard Stine

E:\PROJECTS\CONST-ADM\TIELINE.DOC Bill Brown
Jack Lenic

EXHIBIT "C" to Complaint

P

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
500 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

October 31, 2000

Continental Construction
PO Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01, Sanitary Sewer Construction Project
Work Directive No. 1

Dear Ms. Marzella:

In accordance with the WBMA directive, you are hereby directed to proceed with the realignment of the Sanitary Sewer Line at Manholes A-20 through A-28.

The attached Work Directive is to relocate the above mentioned Manholes to eliminate any additional costs due to sawing of the additional pavement thickness, and eliminate additional work to the Contractors schedule.

Upon review of previous documentation concerning equipment used by CCI to saw cut the pavement, an equipment rate of $16.50/hour was used and $30.36/hour for an operator. The equipment used by CCI will cut an approximate 125 LF/hour which equals a credit of $2.66/LF X 2,400 LF equals $6,400.00.

With removal of the sanitary line from under paved areas, a credit for deletion of pavement is required. SEA has estimated a deletion of 800 SY of paving restoration. With unit costs of $10.40/SY for 4" of BCBC and $5.85 for 1 ½ of ID-2 Wearing Course, the approximate credit for paving restoration is $13,000.00.

EXHIBIT "D" to Complaint

There will be a minimal cost for additional grass area restoration due to relocation of the sanitary line. CCI had previously submitted .25 cents/LF for restoration of grass areas. Upon review SEA amended that estimate to .50 cents/LF for restoration of grass areas, which would equate to an add of $1,200.00.

CCI has already placed an approximate 163LF of sanitary line from MH A-20 towards MH A-21. The revised location of MH A-21 will require removal and replacement of the above mentioned 163 LF of sanitary line.

The Authority will pay for the relocation of this line by use of unit cost for sanitary line installation 6'-8' deep of $19.00/LF or approximately $3097.00 increase to be added by units installed.

The attached summary is only approximate, the quantities will be verified to expedite the appropriate Change Order.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

Cc: WBMA
George S. Test, Esquire
U.S. Army Corps of Engineers, Pablo Colon-Garay
PennVEST, Bill Malinich
File 3334-2;Contract 2000-01

Approximate Credit Due for Sanitary Line Relocation

Approximately 2400 LF of Saw Cutting not needed	$ 6,408.00
Approximately 800 SY pavement restoration	$13,000.00
Subtotal Credits	**$19,408.00**
Add for Grass Restoration 2400 LF	$ 1,200.00
Add by Unit Cost to bid items for replacement Of 163 LF of line	$ 3,097.00
Subtotal Adds	**$ 4,297.00**

Summary:

Credits	$19,408.00
Adds	- $ 4,297.00
Credit to the Authority	$15,111.00

WORK CHANGE DIRECTIVE

No. 1

DATE OF ISSUANCE 10/31/00 EFFECTIVE DATE 10/31/00

OWNER Wallaceton-Boggs Municipal Authority

CONTRACTOR Continental Construction, Inc.
Contract: Contract 2000-01
Project: Sanitary Sewer Construction Project
OWNER's Contract No. 2000-01 ENGINEER'S Project No. 3334-2

You are directed to proceed promptly with the following change(s):

Description:
Move Manholes A21 through Manholes A-28 from the roadway, a maximum of 10' as directed by Sweetland Engineering & Associates, Inc.'s RPR. Remove the approximate 163 LF of sanitary line previously placed out of Manhole A-20. The Contractor will be paid unit price for replacement of the 163' of line installed in revised alignment

Purpose of Work Change Directive:
To move the sanitary sewer line from in the roadway to eliminate additional cost for extra pavement thickness, and eliminate extra work for the Contractor.

Attachments: (List documents supporting change)
See Attached Letter, and Field Speed Memo.

If OWNER or CONTRACTOR believe that the above change has affected Contract Price any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in Contract Price:

- [x] Unit Prices
- [ ] Lump Sum
- [ ] Cost of the Work To be determined

Estimated (**decrease**) in Contract Price:
$ 15,111.00
If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract Times: 0 days
Substantial Completion: 180 days;
Ready for final payment: 240 days.

RECOMMENDED:
Sweetland Engineering & Associates, Inc.
ENGINEER
By:

AUTHORIZED:
Wallaceton-Boggs Municipal Authority
OWNER
By: Christopher P. Burga

EJCDC No. 1910-9-F (1996 Edition)
Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

November 1, 2000

Continental Construction
PO Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: Wallaceton-Boggs Municipal Authority
Contract 2000-01, Sanitary Sewer Construction Project

Dear Ms. Marzella:

To help clarify any questions concerning the Work Directive No. 1 associated with the relocation of MH A21 through MH A-28, we have the following comments.

The equipment rate was established previously for an earlier request for a Change Order for roadway saw cutting (September 28, 2000 saw cut pavement cost adjustment request). The amount of roadway cut per hour was established by visual verification of the CCI equipment in use on another section of roadway.

The estimated 800 SY of pavement restoration was established by estimating an average of 3' wide by an approximate 2400 LF of pavement area that would have required replacement. Any pavement restoration not done will be adjusted as a Change Order at the completion of the project by use of a quantities adjustment Change Order.

The additional fees for grass restoration was based on actual figures submitted by CCI and amended by SEA.

In addition, the replacement of the 163 LF of pipe previously installed, the Contractor will be paid when pipe as been replaced in accordance with applicable bid Item.

In summary, the paving restoration, the pipe replacement, and the restoration of Grass areas will be adjusted by the use of unit cost pay items. The only item that will require an executed change order is the credit for not saw cutting the road. When we have finalized the quantities of sawing that was deleted, we will prepare the proper change order request.

As stated in our earlier correspondence all MH relocation will be coordinated through SEA RPR on-site with a maximum movement of 10' from the original location. There are not any easements affected by the relocation because there is a 60 foot Township Right-of-Way in this area.

Should CCI choose not to proceed in accordance with Work Directive No. 1, they will be in violation of the Contract Requirements. If the Contractor disagrees with the determination of the Engineer, they are to proceed in accordance with paragraph 10.05 of the General Conditions (reference G.C. 1C.01 A and B).

We are hopeful that this clarifies any questions you may have concerning the relocation of manholes. Please inform SEA's RPR of your proposed schedule to begin work in this area to allow coordination of manhole locations.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

Cc: WBMA
George S. Test, Esquire
U.S. Army Corps of Engineers, Pablo Colon-Garay
PennVEST, Bill Malinich
File 3334-2;Contract 2000-01

#20234
P

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

November 16, 2000

Continental Construction, Inc.
P.O. Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: Wallaceton-Boggs Municipal Authority
Contract 2000-01; Sanitary Sewer Construction Project

Dear Ms. Marzella:

In accordance with the WBMA, we are hereby issuing Notice to Proceed with work in accordance with Work Directive No. 1 to move the Sanitary Line Construction off of Laurel Run Road.

The Authority acknowledges the fact that the lateral crossings must be cut across the concrete roadway. The Authority will pay for lateral saw cutting at a rate of $3.32/LF of saw cutting. This rate is established by use of the previous cutting of 2400 LF at $7,957.00. All revised manhole locations have been marked with one (1) manhole added manhole, with a rim elevation of 1592.60and an invert in of 1581.25 and an invert out of 1581.05. All adjustments will be paid in accordance with unit cost prices. An SEA RPR will be in the area of relocation to document any added work, i.e. move mail boxes, head walls, etc., that would not have been required at the original line location. In addition, the sanitary line at Arc Road has been adjusted to eliminate extensive roadway saw cutting and restoration in that area. The revised manhole locations have also been marked in the area of Arc Road. SEA will have a representative present to address any additional items requiring movements due to the relocation of the line. All additional work required, that is not established in unit cost bid items, must be verified by and agreed to on a daily basis by CCI and the SEA RPR.

A summary of additional material and labor must be signed off every day, by each party. We have attached a marked up plan of manhole relocations for your use. A copy of this letter and the marked plan has been hand delivered to your field personnel.

At the completion of the relocation, we will summarize any additional costs associated with the relocation, and recommend a Change Order, based on daily agreed upon labor and materials. We are hopeful that we have addressed all issues, and believe this will expedite the project schedule.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

TAG:mm

Attachments

Cc: WBMA
U.S. Army Corps of Engineers, Pablo Colon-Garay
DEP, Bill Malinich
Mr. George Test
File 3334-2; Contract 2000-01

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SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

February 13, 2001

Continental Construction, Inc.
P.O. Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01; Sanitary Sewer Construction Project

Dear Ms. Marzella:

We have recently received a phone call from the WBMA regarding several verbal complaints associated with the conditions of the roadways, driveways, and access to resident homes throughout the project area. These areas are:

- In the area of MH A-48 through A-51 at Baughman Street
- Bigler Street Crossing
- I Line – Grass Areas
- H Line – Crossings and driveways
- Alley between A Line and O Line
- Harbison Street
- Two Crossings on Arch Road
- 1 Driveway on Y Line
- Railroad Street
- All SR 2024 Crossings
- Top Section of Sportmans Road

Due to the forecasted rain for the next few days, we believe these areas will continue to deteriorate. In accordance with Section 01010, 1.09.B these crossings shall be maintained properly to eliminate rough sunken, raised, or otherwise unsafe conditions by the Contractor. In addition, the deteriorated roadways, driveways, etc., have become a public nuisance. In

EXHIBIT "E" to Complaint

accordance with Section 01010, 1.09.E, should a public nuisance be created by the Contractor in the opinion of the Owner, then upon written notice the Owner may request the appropriate Authority having jurisdiction where the nuisance occurs to correct the damage and the cost of the work shall be deducted from any amounts otherwise due or to become due the Contractor.

CCI's immediate action is required to repair or replace any deteriorated driveways, walkways, roadways or accesses that may exist on the project.

Consider this written notification of a public nuisance due to the deteriorated areas. Should CCI choose not to take immediate action to repair or replace these deteriorated areas all areas will be repaired or replaced, and all associated costs will be deducted from CCI's next payment.

Please coordinate all exact locations and revisions with our on-site RPR, Mr. Ron Senior, and proceed immediately with the appropriate action required to eliminate this issue.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

Cc: WBMA
US Army Corps of Engineers, Pablo Colon-Garay
DEP, Bill Malinich
George S. Test, Esquire
SEA Field Office
File 3334-2; Contract 2000-01

WALLACETON-BOGGS MUNICIPAL AUTHORITY
P.O. BOX97
WEST DECATUR, PA 16878

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16 November 2000

Sweetland Engineering & Associates, Inc.
600 Science Park Road
State College PA 16803

ATTEN: Tracy Gardner

Subject: Contract 2000-01
Collection & Conveyance System

Dear Mr. Gardner:

Reference your letter dated 8 November 2000 to Continental Construction Inc. regarding the additional wye fittings allegedly installed under the above subject contract.

The Authority is unaware of any directive which permitted the installation of any additional fittings on this project.

It is our understanding that Continental has requested a change order for the additional 6" x 4" wyes which they state that they were directed to install. Continental has requested an increase in the contract price of $80.00 per wye and a 30-minute extension of time per wye.

The Authority obtained pricing from a local pipe supplier for a 6" x 4" wye. That price per wye was $14.00. It is incomprehensible to Authority members that adding 30 minutes labor to the cost of a $14.00 wye would result in an installed price of $80.00 per wye.

It is the Authority's position that they did not direct the installation of the wyes and are not interested in having the contractor install the wyes. At some later date, the Authority may decide to purchase wyes for the sanitary sewer laterals and provide them free-of-charge to the system users when they begin to connect to the system.

Sincerely,

Christopher P. Bungo

Christopher P. Bungo, Secretary/Treasurer

xc: Project File wbma/cor
George Test, Esquire

EXHIBIT "F" to Complaint

20109

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SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

October 4, 2000

Continental Construction
PO Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: Wallaceton-Boggs Municipal Authority
Contract 2000-01, Sanitary Sewer Construction Project

Dear Ms. Marzella:

Upon review of your letter dated, September 29, 2000, concerning our phone conversation on September 15, 2000, I have the following clarifications that I would like to note.

I did not state that Continental Construction, Inc., could have obtained information from the Wallaceton-Boggs Municipal Authority (WBMA) or the community about subsurface conditions. I believe I stated that you may have obtained information from the above mentioned parties. I also did not state that the above referenced parties were aware of subsurface structures. I stated that there might have been many people in the area that knew of a brick yard in the areas. In addition, I did not state that it was common knowledge that items were buried underground, only that the brick yard was common knowledge.

Additionally, I did not reference illegally buried structures, your question was "did we know that items were buried illegally in the area." I stated that at the time items were buried, it may not have been illegal.

You continue to reference buried structures in your letter, but I do not recall discussions directly addressing prior knowledge of buried structures. The WBMA or SEA did not have any prior knowledge of underground structures or conditions other than what was reported in core boring reports supplied with the Contract Documents. In accordance with the Contract Documents, all excavation is unclassified.

EXHIBIT "G" to Complaint

The Contract Documents give the Contractor permission to perform exploratory excavation prior to bidding, this option was not taken by Continental Construction.

In an effort to eliminate any further misinterpretation at verbal communication, we are requesting all correspondence in writing.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

TAG:rmm

Attachment

Cc: George S. Test, Esquire
WBMA
File 3334-2; Contract 2000-01

CONTINENTAL CONSTRUCTION, INC.

PO BOX 126
RIDGWAY, PA 15853
PHONE: 814-776-6126 FAX: 814-776-6121
EMAIL: julee@penn.com

RECEIVED
OCT 03 2000
SWEETLAND AND ASSOCIATES

September 29, 2000

Mr. Tracy A. Gardner
Sweetland Engineering & Associates, Inc.
600 Science Park Road
State College, PA 16803

Re: Contract 2000-01, Sanitary Sewer Project
Wallaceton-Boggs Municipal Authority

Dear Mr. Gardner:

On September 15, 2000 at approximately 9:40 AM, you and I had a telephone conversation during which we discussed your letter dated September 14, 2000 concerning unclassified excavation in the areas between manholes AE-2 through A-3 and A-3 through A-5.

During our conversation, you stated that at the time of bid, we should have assumed that we would be encountering brick and concrete structures during excavation in these areas since there were bricks present on the ground surface before the project bid. I disagreed and asked how we could have possibly known about the sand and ash pits that we encountered in the trench. You stated that we could have obtained that information from a WMBA member or anyone who lives in this area since some members of the WBMA and the community knew of the existence of these subsurface structures. You even said it was common knowledge in the area that a brickyard existed on this site and that these items were buried underground. I responded that we would not assume that someone illegally buried structures such as those encountered just because there were a few bricks lying on the ground. You said that it might not have been illegal to bury these structures years ago, at the time when they were actually buried. Nonetheless, you still contended since you and some Authority members had knowledge of these buried structures that we had access to this information and failed to ask.

The WBMA and SEA were well aware of these hidden underground conditions and structures prior to the bid date and failed to disclose this information to the bidders. Despite the fact that the WBMA/SEA had knowledge of these items, they failed to put this information in the bidding documents.

We have completed the sewerline work in this area per your direction. We have documented all extra time and expense associated with removing this material. An invoice for these additional costs and extra time will be forthcoming. The above is supplementing information to our letter of September 18, 2000 regarding this issue.

Sincerely,
Continental Construction, Inc.

Julee M. Marzella, Sec/Treas.

Cc: Mr. Kevin McKeon, Fluke, Weiers & Schmitt, P.C.

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SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

October 5, 2000

Continental Construction
PO Box 126; Johnsonburg Road
Ridgway, PA 15853
Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
2B Stone

Dear Ms. Marzella:

In response to Continental Construction, Inc. Letter dated October 4, 2000, attached for your reference, concerning HRI, Inc. – Eastern Region's use of 2B stone for pipe bedding, we have the following response.

HRI, Inc.'s use of 2B Stone as pipe bedding was accepted by the WBMA with two conditions. The first condition is that the Contractor issue a credit to the WBMA for the substitution of 2B stone for the specified 2A.

The second condition is that the contractor install a subsurface drain from the low point in the trench to daylight, to allow discharge of any water that my collect in the 2B Stone. The Contractor agreed to both conditions noted and proceed with pipe installation. We believe the above referenced conditions were offered to Continental Construction for the use of 2B pipe bedding for Contract 2000-01 and were not acceptable to Continental Construction, Inc.

We hope that this letter will clarify any concerns you may have associated with the piping installation on Contract 2000-02.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner, EMM

Tracy A. Gardner
Construction Services Manager

Attachment

Cc: WBMA
George S. Test, Esquire
U.S. Army Corps of Engineers
File 3334-2; Contract 2000-01

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EXHIBIT "H" to Complaint

WALLACETON-BOGGS
DEFECTIVE MANHOLES/UNKNOWN COSTS LIST

Four manholes are still defective on the project: MH AE-19, MH O-1, MH K-1, and MH A-68.

Cost Breakdown using T/C and Invert numbers supplied by CCI on the project as-built drawings.

4 MH @ $1100.00 each	cost	$4400.00
7.13 VF @ $60.00 VF	cost	$ 427.80
	Total cost	$4827.80

UNKNOWN COST LIST:

1.	Areas cleared outside of the established easements.	Cost:?
2.	Sewer lines installed at less than designed slopes.	Cost:?
3.	Sewer lines installed out of established easement areas.	Cost:?
4.	Repairs for unknown property damage.	Cost:?

EXHIBIT "I" to Complaint

FINAL COMPLAINT COST FOR WBMA

NOTE: THE NUMBERS THAT ARE LISTED BEFORE EACH ITEM CORRESPOND TO THE RESPONSE NUMBER OF INDIVIDUAL COMPLAINTS CURRENTLY NOT ADDRESSED.

PLANTINGS

COMPLAINT RESPONSE NUMBER		
4.	(2) JUNIPERS	$50.00
12.	(2) ROSE OF SHARON	$80.00
16.	(40 LF) PRIVET HEDGE 4-5' HIGH	$830.00
17.	(6) JUNIPERS, MULCH, "Something Wisteria"	$500.00
15.	(3) BLUE SPRUCE PINE TREES 4-5' HIGH	$200.00
19.	(1) JAPANESE MAPLE 4-5' HIGH	$150.00
19.	(1) RED AZALEA 2' HIGH	$25.00

3., 12., 15., 17., 18., 19., & A-12 TO A-26, K-2 TO K-3, CARAM PROPERTY (A-48 TO G-1) — 4" TOPSOIL AND SEEDING

1627SY @ $2.40 SY — $3904.80

PIPING

1.	EXTEND LATERAL APPROX. 40 LF @ 18.00 LF	$720.00
5.	REIMBURSE HOMEOWNER FOR REPAIRS COMPLETED	$223.56
15.	REPLACE (2) 20' SECTION OF 12" CMP	$500.00
15.	REPAIR WATER WELL DRAINAGE LINE	$200.00
15.	REPAIR BASEMENT DRAIN	$100.00

EARTH WORK

1.	RECONSTRUCT DITCH LINE TO CORRECT DEPTH AND PATH	$500.00

ROADWAY REPAIRS

8.	REGRADE DIRT ROAD	$300.00
9.	REPAIR SETTLED DRIVEWAY PAVEMENT	$650.00
4., 6.,	DRIVEWAY REPAIRS	$500.00

SURVEY

COMPLAINT RESPONSE NUMBER		
7., 8., 11., 13., 14.	RESET PROPERTY PINS	$2500.00

VEHICLE DAMAGES

5.	BROKEN WINDSHIELD	$145.00
10.	TRUCK TIRE AND ALIGNMENT	$150.00

DEBRIS REMOVAL/CLEANUP

2., 8., 19.,		$2500.00

MISCELLANEOUS ITEMS

15.	FENCE REPAIR	$150.00
15.	MAILBOX REPAIR	$45.00
	RESET FENCE AT CARAM PROPERTY	$150.00
	SUPPLY 30 TON 2B AND 6-8 TON 2RC TO WALLACETON BOROUGH.	$500.00
19.	REPAIRS TO GRAPE ARBOR	$100.00

ESTIMATED TOTAL COST FOR COMPLAINT REPAIRS

$15673.36

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared RICHARD SHIMMEL, Chairman of the Wallaceton-Boggs Municipal Authority, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer to Complaint and Counterclaim are true and correct to the best of his knowledge, information and belief.

Richard Shimmel

SWORN and SUBSCRIBED before me this 8th day of October, 2001.

Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUANTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Defendant's Answer to Complaint and Counterclaim filed in the above-captioned action was served on the following person and in the following manner on the 9th day of October, 2001:

First-Class Mail, Postage Prepaid

Kevin J. McKeon, Esquire
Fluke, Weiers & Schmitt, P.C.
1400 The Bank Tower
Pittsburgh, PA 15222

James A. Naddeo
Attorney for Defendant

Exhibit B

rec'd 10/8/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUANTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.,
Plaintiff,

v.

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,
Defendant.

No. 01-1265-CD

Type of Pleading:

Answer to Complaint
and Counterclaim

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Exhibit "B" to Joinder Complaint

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUANTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant.	*	

NOTICE TO PLEAD

TO THE PLAINTIFF:

You are hereby notified to file a written response to the enclosed Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.

James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUANTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.,
Plaintiff,

v.

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,
Defendant.

No. 01-12165-CD

ANSWER TO COMPLAINT AND COUNTERCLAIM

NOW COMES the Defendant, Wallaceton-Boggs Municipal Authority, and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. Admitted.

2. Admitted.

3. Admitted.

4. Paragraph 4 is admitted in so far as it alleges that Authority employed Sweetland Engineering & Associates, Inc. It is denied, however, that said employment occurred prior to December, 1999 but to the contrary said employment occurred on or about November 12, 1998. It is further denied that Sweetland was employed to design a specific number of lineal feet of pipe line but to the contrary its commission was to design a sewage collection and treatment system sufficient to service the residents of Wallaceton Borough and a portion of Boggs Township.

5. Denied and on the contrary it is alleged that bids for the project were advertised on March 8, 2000 and that

Contract Documents were supplied for inspection on or about March 22, 2000.

6. Admitted.

7. Admitted in so far as it alleges that Plaintiff submitted a bid proposal to construct the project. The remainder of said allegation is denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

8. Denied as stated. It is admitted, however, that Plaintiff was the lowest bidder.

9. Admitted.

10. Admitted in so far as it states that the Authority and Engineer conducted a pre-construction meeting with CCI. It is denied, however, that CCI immediately commenced work but to the contrary said work was not commenced until June 21, 2000.

11. Admitted in so far as it alleges that a multitude of disputes arose between CCI, the Authority and the Engineer. The remainder of said allegation is denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

12. Admitted.

COUNT 1: BREACH OF CONTRACT

13. Defendant incorporates its answers to Paragraphs 1 through 12 of Plaintiff's Complaint by reference and makes them a part hereof.

14. Admitted in so far as it alleges that Plaintiff submitted Shop Drawings to the Engineer for approval of the specific dimensions of the proposed manholes and to approve the supplier, McGill Septic Tank Company. In further answer thereto it is alleged that said Plans were also submitted for the purpose of reviewing manufacturing criteria.

15. Denied and on the contrary it is alleged that the Engineer provided conditional approval of the manhole supplier by letter dated June 14, 2000. A copy of said letter is attached hereto as Exhibit "A".

16. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

17. Admitted in so far as it states that the Engineer notified Plaintiff that it was withdrawing the conditional approval. It is denied, however, that the Engineer changed the interpretation of the Contract Specifications and to the contrary it is alleged that the Contract Specifications required that manholes to be used in PennDOT right-of-way be approved by PennDOT as required by the Contract Specifications Section 01010(1.5)(B)

and (C) and Section 02730(1.03). In further answer thereto it is alleged that approximately two weeks following Plaintiff's representation that the manholes provided by its proposed supplier was approved by PennDOT, PennDOT informed Engineer that the manholes proposed by Plaintiff were not approved by PennDOT.

18. Admitted in so far as it states that Plaintiff submitted new drawings from a different manhole supplier and that Plaintiff requested the Authority to issue a Change Order. It is denied, however, that there was a new interpretation of the Contract Specifications and in further answer thereto Defendant incorporates its answer to Paragraph 17 of Plaintiff's Complaint by reference and makes it a part hereof.

19. Admitted.

20. Denied in so far as it alleged that the Engineer changed its interpretation of the Specifications and in further answer thereto Defendant incorporates its answer to Paragraph 17 of Plaintiff's Complaint by reference and makes it a part hereof. It is admitted that Plaintiff requested a Change Order.

21. Admitted as stated but in further answer thereto it is alleged that the Engineer's decision to refuse Plaintiff's Change Order request was justified because of contractor's misinterpretation of the Contract Documents and contractor's misrepresentation that the manholes manufactured by McGill Septic Tank Company were PennDOT approved. In further answer thereto it

is alleged that contractor failed to substantiate its request for Change Order in terms of increased costs or the necessity for an extension of time.

22. Denied for the reasons set forth in answers to Paragraphs 17, 18 and 21 of Plaintiff's Complaint which answers are incorporated herein by reference and made a part hereof.

23. Denied for the reasons set forth in answers to Paragraphs 17, 18 and 21 of Plaintiff's Complaint which answers are incorporated herein by reference and made a part hereof.

24. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant respectfully requests that Count I of Plaintiff's Complaint be dismissed.

COUNT II: BREACH OF CONTRACT

25. Defendant incorporates its answers to Paragraphs 1 through 24 of Plaintiff's Complaint by reference and makes them a part hereof.

26. Admitted as stated but in further answer thereto it is alleged that a Plan was approved on March 22, 2000 as appears from letter to the Authority dated March 22, 2000. A copy of said letter is attached hereto as Exhibit "B".

27. Admitted.

28. Admitted.

29. Denied and on the contrary it is alleged that filter fabric fence was detailed on Sheet ESCD-50. It is admitted that the Bid Form had no separate bid item for filter fabric fence and in further answer thereto filter fabric fence was listed as an incidental item to be included in contractor's unit price for bid items 1, 2, 3, 4., 5, 7, and 10.

30. Admitted as stated but in further answer thereto it is alleged that the use of filter fabric fence was required by Section 01025 of the Contract.

31. Admitted.

32. Admitted.

33. Admitted.

34. Denied. After reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment. In further answer thereto it is alleged that under Section 01025 of the Contract Documents mulching was incidental to certain bid items.

35. Denied and on the contrary it is alleged that the Authority was required to amend its Plan because of contractor's failure to implement E&S Controls as required by the Contract.

36. Admitted.

37. Denied and on the contrary it is alleged that the Amended Plan submitted by the Engineer did not cause significant

changes in the contract with the exception of the amount of silt fence required.

38. Denied and on the contrary it is alleged that the Authority issued a Change Order compensating contractor for additional work required because of the Plan amendment.

39. Admitted.

40. Admitted.

41. Denied in so far as it alleged that the amendment to the Authority's E&S Control Plan did not alter the scope of the contract. It is admitted that said amendment required additional filter fabric fence for which contractor was reimbursed by Change Order.

42. Denied and on the contrary it is alleged that Plaintiff was fully compensated by Change Order.

43. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count II of Plaintiff's Complaint be dismissed.

COUNT III: BREACH OF CONTRACT

44. Defendant incorporates its answers to Paragraphs 1 through 43 of Plaintiff's Complaint by reference and makes them a part hereof.

45. Admitted.

46. Denied and on the contrary it is alleged that the Authority obtained a Permit which was approved by DEP on or about March 22, 2000. A copy of said approval is attached hereto as Exhibit "B".

47. Admitted.

48. Denied and on the contrary it is alleged that DEP did not revoke the Authority's permit but to the contrary required it to be revised.

49. Denied and on the contrary it is alleged that the Change Order requested by Plaintiff for a contract extension of 92 days was in no manner caused by the amendment to the Authority's E&S Control Plan. In further answer thereto it is alleged that Plaintiff had ample work in other areas of the Project which justified a remobilization time extension which was granted by the Authority. Finally, it is denied that the sequence and flow of Plaintiff's work was not impaired so as to delay completion of the project.

50. Denied and on the contrary it is alleged that the Authority claimed a one-day remobilization extension.

51. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

52. Denied and on the contrary Plaintiff was provided with a reasonable extension of its contract time.

53. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count III of Plaintiff's Complaint be dismissed.

COUNT IV: BREACH OF CONTRACT

54. Defendant incorporates its answers to Paragraphs 1 through 53 of Plaintiff's Complaint by reference and makes them a part hereof.

55. Denied and in answer thereto it is alleged that the Contract and its interpretation speaks for itself.

56. Admitted but in further answer thereto Defendant incorporates Section 00200, Article 4 and Section 01010(1.14) of the Contract Documents.

57. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

58. Denied in so far as it alleges that the Plans were inaccurate and grossly misrepresented the character of the work, physical conditions, subsurface conditions and location of underground facilities. In further answer thereto Defendant incorporates Section 00200, Article 4, 0002225(1.07) and Section 01025 of the Contract.

59. Denied and in answer thereto Defendant incorporates Section 00200, Article 4, 0002225(1.07) and Section 01025 of the Contract.

60. Denied and in answer thereto Defendant incorporates Section 00200, Article 4, 0002225(1.07) and Section 01025 of the Contract.

61. Denied and in answer thereto Defendant incorporates Section 00200 Article 4, 01010(1.14)(A), 01010(1.14(B), 01010(1.14)(F), Addendum #1, Contract 2000-01, Item 4B and Section 010125.

62. Denied in so far as it alleges that the conditions and locations were not accurately depicted and that Plaintiff was significantly delayed in the progress of its work. In further answer thereto, it is denied that Plaintiff was required to employ extraordinary measures and that any delay was caused by Plaintiff's failure to deploy a full crew to diligently pursue the Project.

63. Denied in so far as it states that Plaintiff encountered changes and additional work resulting from defects in the Plans. In further answer thereto it is alleged that to the extent that Plaintiff did incur additional work, Plaintiff was reasonably compensated.

64. Admitted as stated but in further answer thereto Defendant incorporates the provisions of the Contract previously cited in response to Plaintiff's allegation.

65. Denied and on the contrary it is alleged that the Authority has at all times fairly and reasonably compensated Plaintiff for additional work determined to be beyond the scope of the Contract.

66. Purports to be a statement of the law to which no answer is required.

67. Admitted but in further answer thereto Defendant incorporates Section 01010(1.4)(B), (C) and (F) by reference and makes them a part hereof.

68. Admitted but in further answer thereto Defendant incorporates its answer to Paragraph 67 of Plaintiff's Complaint by reference and makes it a part hereof.

69. Admitted but in further answer thereto Defendant incorporates its answer to Paragraph 67 of Plaintiff's Complaint by reference and makes it a part hereof.

70. Admitted but in further answer thereto Defendant incorporates its answer to Paragraph 67 of Plaintiff's Complaint by reference and makes it a part hereof.

71. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Plaintiff's Count IV be dismissed.

COUNT V: BREACH OF CONTRACT

72. Defendant incorporates its answers to Paragraphs 1 through 71 of Plaintiff's Complaint by reference and makes them a part hereof.

73. Denied and on the contrary it is alleged that the Contract Documents and their interpretation speak for themselves.

74. Denied and in answer thereto Defendant incorporates Section 01010(1.6)(A) and (B) of the Contract Drawings and Specifications.

75. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment. In further answer thereto it is denied that the Authority or Engineer made any representations to Plaintiff.

76. Denied in so far as it alleges that the Plans were false, misleading, inaccurate and grossly misrepresented the character of the work in so far as said Plans related to physical conditions, subsurface conditions and location of underground facilities. And in further answer thereto Defendant incorporates

Section 001010(1.14)(B) of the Contract Documents and Specifications.

77. Denied and on the contrary it is alleged that any delay in the progress of the work or extraordinary measures taken by contractor was the direct result of contractor's under-manning of the Project and by delaying the onset of construction activities for 34 days while completing other projects.

78. Denied is so far as it implies that Plaintiff encountered differing conditions and in further answer thereto it is alleged that Plaintiff was fairly and reasonably compensated for any work that exceeded the scope of the Project.

79. Admitted.

80. Denied and on the contrary it is alleged that the Authority fairly and reasonably compensated contractor for work performed beyond the scope of the Contract and further adjusted the time for performance to the extent that an extension was justified.

81. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Plaintiff's Count V be dismissed.

COUNT VI: BREACH OF CONTRACT

82. Defendant incorporates its answers to Paragraphs 1 through 81 of Plaintiff's Complaint by reference and makes them a part hereof.

83. Denied and on the contrary it is alleged that Sheet 18 of 57 of the Contract Documents accurately depicts the location of an existing storm sewer on Clearfield Street between Manhole A51 and A53.

84. Denied and on the contrary it is alleged that there was no error in the Plans but that dispute arose over the location of the waterline, sanitary sewer line and the storm sewer. It is admitted, however, that ~~450~~ 300 feet of storm sewer and catch basin had to be relocated.

85. Admitted but in further answer thereto it is alleged that Plaintiff subsequently by letter dated January 19, 2001 agreed to accept $18.50 per lineal foot to relocated the sewer line and to accept $120.00 per catch basin. Finally, Plaintiff requested a two-day extension of time for work which was granted.

86. Denied and in answer thereto Defendant incorporates its answer to Paragraph 85 by reference and makes it a part hereof.

87. Denied in so far as it alleges that the interference by PennDOT changed the sequence and scope of the work

and in further answer thereto it is alleged that Plaintiff was fairly and reasonably compensated in both contract time and payment for the additional work.

88. Denied in so far as it alleges that PennDOT initiated changes in the scope of the work and to the contrary it is alleged that said changes were the result of a dispute over the location of waterlines and sanitary sewer lines. In further answer thereto it is alleged that Plaintiff accepted the Change Order approved by the Authority which fairly and reasonably compensated Plaintiff for any additional work and for the additional time required to perform said work.

89. Denied and in answer thereto Defendant incorporates its answer to Paragraphs 87 and 88 of Plaintiff's Complaint by reference and makes them a part hereof.

90. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Plaintiff's Count VI be dismissed.

COUNT VII: BREACH OF CONTRACT

91. Defendant incorporates its answers to Paragraphs 1 through 90 of Plaintiff's Complaint by reference and makes it a part hereof.

92. Admitted and in further answer thereto Defendant incorporates Memorandum attached hereto as Exhibit "C".

93. Admitted.

94. Admitted.

95. Admitted but in further answer thereto it is alleged that by letters dated October 31, 2000, November 1, 2000 and November 16, 2000, the Authority responded to CCI's request for Change Order and provided clarification as to how CCI would be paid for additional work. Copies of said letter are attached hereto collectively as Exhibit "D".

96. Denied and on the contrary it is alleged that Plaintiff was reasonably and properly compensated for any additional work with unit price adjustment or Change Orders.

97. Denied and in answer thereto Defendant incorporates its answer to Paragraph 96 of Plaintiff's Complaint by reference and makes it a part hereof.

98. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count VII of Plaintiff's Complaint be dismissed.

COUNT VIII: BREACH OF CONTRACT

99. Defendant incorporates its answer to Paragraphs 1 through 98 of Plaintiff's Complaint by reference and makes them a part hereof.

100. Denied and on the contrary it is alleged that the section cited by Plaintiff in said allegation speaks for itself.

101. Denied and on the contrary it is alleged that the Authority never authorized another contractor to remove significant quantities of material from CCI's stockpile of fill. In further answer thereto it is alleged that Plaintiff failed to obtain approval of its fill from the Project Engineer.

102. Admitted.

103. Admitted and in further answer thereto it is alleged that Plaintiff never maintained 500 cy of approved suitable backfill as required by Section 02225(2.3)(A) of the Contract Documents and Specifications and therefore no change order was required.

104. Denied and on the contrary it is alleged that Plaintiff never supplied additional stockpile material to Authority and its claim to the contrary is fraudulent.

105. Denied and in answer thereto Defendant incorporates its answer to Paragraph 104 of Plaintiff's Complaint by reference and makes it a part hereof.

106. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count VIII of Plaintiff's Complaint be dismissed.

COUNT IX: BREACH OF CONTRACT

107. Defendant incorporates it answers to Paragraphs 1 through 106 of Plaintiff's Complaint by reference and makes them a part hereof.

108. Admitted in so far as it alleges that Defendant directed Plaintiff to perform remedial work on certain roadways. It is specifically denied that said remedial work was the result of defective design or weather conditions and to the contrary was the direct result of improper construction and maintenance on the part of Plaintiff. In further answer thereto Defendant notified Plaintiff of the road defects by letter dated February 13, 2001. A copy of said letter is attached hereto as Exhibit "E".

109. Denied and on the contrary it is alleged that Plaintiff never requested additional compensation for remedial work on the roadways and in further answer thereto it alleged that said work was within the scope of Plaintiff's Contract in accordance with Section 01010(1.09)(B) and (E) of the Contract Plans and Specifications.

110. Admitted. In further answer thereto Defendant incorporates its answers to Paragraphs 108 and 109 of Plaintiff's Complaint by reference and makes them a part hereof.

111. Denied and on the contrary it is alleged that said remedial work was within the scope of Plaintiff's Contract and in further answer thereto Defendant incorporates its answers to Paragraphs 108 and 109 of Plaintiff's Complaint by reference and makes them a part hereof.

112. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count IX of Plaintiff's Complaint be dismissed.

COUNT X: BREACH OF CONTRACT

113. Defendant incorporates its answers to Paragraphs 1 through 112 of Plaintiff's Complaint by reference and makes them a part hereof.

114. Denied and on the contrary it is alleged that at the pre-bid conference, Defendant notified bidders that one dump site would be available within the site to dispose of excess material.

115. Denied. After reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

116. Denied and on the contrary it is alleged that Defendant identified one dump site at the pre-bid conference on the property of Darrell Dufour. In further answer thereto it is alleged that Defendant did inform Plaintiff that a second potential dump site was available within the Borough of Wallaceton known as the Shimmel property but that Plaintiff would have to obtain permission to dump at that site.

117. Denied and in further answer thereto Defendant incorporates its answer to Paragraph 116 hereof which is incorporated herein by reference.

118. Admitted in so far as it states that Plaintiff demanded a Change Order which was rejected. In further answer thereto it is alleged that said refusal was premised upon Defendant's contention that Plaintiff was aware that only one dump site had been established on the Darrell Dufour property that any surplus materials not placed at said dump site would be disposed of at the expense of the contractor.

119. Denied and in answer thereto Defendant incorporates its answer to Paragraphs 116, 117 and 118 of Plaintiff's Complaint by reference and makes them a part hereof.

120. Denied and in answer thereto Defendant incorporates its answers to Paragraphs 116, 117 and 118 of Plaintiff's Complaint by reference and makes them a part hereof.

121. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count X of Plaintiff's Complaint be dismissed.

COUNT XI: BREACH OF CONTRACT

122. Defendant incorporates its answers to Paragraphs 1 through 121 of Plaintiff's Complaint by reference and makes them a part hereof.

123. Denied and on the contrary it is alleged that said estimates were reasonably accurate. In further answer thereto Defendant incorporates Section 11.03(A) of the General Contract Conditions by reference and makes it a part hereof.

124. Denied and on the contrary it is alleged that there were changes to the estimated quantities for each of the items identified by Plaintiff.

125. Admitted but in further answer thereto it is alleged that there was also an agreement that where a bid item varied by more than 15% a potential decrease in unit price might be in order due to volume cost savings.

126. Denied in so far as it implies significant quantity differences. It is admitted, however, that Plaintiff notified Defendant of a request for an adjustment to the as-bid unit price and a reasonable extension of the contract time. In further answer thereto it is alleged that Defendant requested

Plaintiff to justify the alleged cost increase as required by Section 10.05(A) of the General Contract Conditions. Finally, it is alleged that Plaintiff failed to comply with Defendant's request within sixty (60) days.

127. Admitted but in further answer thereto Defendant incorporates its answer to Paragraph 126 of Plaintiff's Complaint by reference and makes it a part hereof.

128. Admitted except to the extent that it implies that there were material and significant changes in estimated quantities. In further answer thereto Defendant incorporates its answer to Paragraph 126 of Plaintiff's Complaint by reference and makes it a part hereof.

129. Denied and in answer thereto Defendant incorporates its answer to Paragraph 126 of Plaintiff's Complaint by reference and makes it a part hereof.

130. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XI of Plaintiff's Complaint be dismissed.

COUNT XII: BREACH OF CONTRACT

131. Defendant incorporates its answer to Paragraphs 1 through 130 of Plaintiff's Complaint by reference and makes them a part hereof.

132. Denied and in answer thereto it is alleged that the Contract Documents and their interpretation speak for themselves. In further answer thereto it is alleged that Plaintiff's as-planned schedule did not establish a critical path and/or indicate a sequencing of areas where the contractor would work.

133. Admitted but in further answer thereto it is alleged that the Defendant at no time forced or directed Plaintiff to proceed out of order to have a normal construction sequence. And to the contrary, Plaintiff often chose to remobilize its crews to an area where it believed there might be a conflict or dispute leaving other areas incomplete in an attempt to validate a claim and seek a Change Order.

134. Denied and in answer thereto Defendant incorporates its answer to Paragraph 133 of Plaintiff's Complaint by reference and makes it a part hereof. In further answer the particulars alleged in Paragraphs 134(a) through (w) constitute restatements of complaints previously addressed in prior counts of Plaintiff's Complaint but to the extent that an answer may be necessary the particulars are as follows:

a. Defendant incorporates its answers to Paragraphs 55, 56, 57, 58 and 60 of Plaintiff's Complaint by reference and makes them a part hereof.

b. Defendant incorporates its answers to Paragraphs 55, 56, 57, 58 and 60 of Plaintiff's Complaint by reference and makes them a part hereof.

c. Defendant incorporates its answers to Paragraphs 55, 56, 57, 58 and 60 of Plaintiff's Complaint by reference and makes them a part hereof.

d. Defendant incorporates its answers to Paragraphs 55, 56, 57, 58 and 60 of Plaintiff's Complaint by reference and makes them a part hereof.

e. All highway occupancy permits were obtained prior to providing Plaintiff with a Notice to Proceed as were all easements and construction right-of-ways.

f. Denied and on the contrary it is alleged Defendant responded to all of Plaintiff's correspondence and verbal communications in a timely fashion as required by the Contract Documents. To the extent that Plaintiff was disenchanted with a response, it often either ignored the response or attempted to validate a claim by alleging that no response had been made.

g. Defendant at all times promptly responded to Plaintiff's request for Change Orders requesting

payment for extra work and/or extensions of contract time.

h. Defendant obtained all permits before Notice tc Proceed was issued.

i. Defendant promptly revised permits upon request of the permitting authority and further alleges that Plaintiff at no time was required to halt construction.

j. Defendant incorporates its answers to Paragraphs 14 through 24 of the First Count of Plaintiff's Ccmplaint by reference and makes them a part hereof.

k. Defendant responded promptly to Plaintiff's inquiry pertaining relocation of segments of sewer line. In further answer thereto it is alleged that Plaintiff was unhappy with the Engineer's response and consequently fabricated delays.

l. Plaintiff failed to provide Defendant with a list of subcontractors with submission of their bid.

m. PennDOT did not require additional work with regard to the storm sewer. The storm sewer was relocated in the same trench as the sewer line due to

a conflict between utilities. Plaintiff was compensated appropriately for its extra work.

n. Defendant incorporates its response to Count IV of Plaintiff's Complaint by reference and makes it a part hereof.

o. Defendant incorporates its answers to the Paragraphs contained in Count II of Plaintiff's Complaint by reference and makes them a part hereof.

p. Defendant incorporates its answers to Count IV of Plaintiff's Complaint by reference and makes them a part hereof.

q. Defendant incorporates its answers to Count IV of Plaintiff's Complaint by reference and makes them a part hereof.

r. Contract Documents Section 11310, Part 2 (2.01) listed specifications and identification of approved manufacturers of grinder pumps. On July 27, 2000 Plaintiff submitted a pump manufactured by an unapproved manufacturer. This pump was rejected because it failed to meet Project requirements. On September 18, 2000, Plaintiff submitted a pump manufactured by F.E. Myers, an approved manufacturer, which pump was approved on September 22, 2000.

s. Defendant did not request Plaintiff to install wye connections and to the contrary instructed Plaintiff not to perform said work by letter dated November 16, 2000. A copy of said letter is attached hereto as Exhibit "F".

t. Defendant incorporates its answers to Count X of Plaintiff's Complaint by reference and makes them a part hereof.

u. Defendant refused to grant winter shutdown because the Project had not been substantially completed by December 19, 2000 as required by the Contract.

v. The Engineer requested that all communications with Plaintiff be done in writing by letter dated October 4, 2000 which letter was given in response to Plaintiff's letter of September 29, 2000. A copy of both letters are attached hereto collectively as Exhibit "G".

w. Defendant at all times cooperated with Plaintiff to assure timely and orderly performance of the work.

135. Denied and in answer thereto Defendant incorporates its answers to Paragraphs 134(a) through (w) of Plaintiff's Complaint by reference and makes them a part hereof.

In further answer thereto it is alleged that Plaintiff never had an as-planned sequential work schedule.

136. Admitted but in further answer thereto it is alleged that the Plaintiff was the cause of the delays and disruptions on the Project.

137. Denied and on the contrary it is alleged that the Authority has adjusted time and prices for all work performed by Plaintiff beyond the scope of the Contract. In further answer thereto it is alleged that all delays and disruptions were caused by the Plaintiff.

138. Denied and on the contrary it is alleged that to the extent that there were delays and disruptions in the Project that all said delays and disruptions were the direct result of the obstreperous conduct on the part of Plaintiff which is solely responsible for any loss of productivity or other expenses incidental to construction delays.

139. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XII of Plaintiff's Complaint be dismissed.

COUNT XIII: BREACH OF CONTRACT

140. Defendant incorporates its answers to Paragraphs 1 through 139 of Plaintiff's Complaint by reference and makes them a part hereof.

141. Denied and on the contrary it is alleged that all relevant information in the possession of Defendant was provided to all bidders including the Plaintiff.

142. Denied and on the contrary it is alleged that the intent and interpretation of the Contract Documents speak for themselves. And in further answer thereto it is specifically denied that Defendant negligently, recklessly, knowingly or otherwise concealed material facts concerning the work to the bidders but to the contrary disclosed all relevant information in its possession and for which it was obligated to disclose.

143. Denied in so far as it states that the Authority withheld its superior knowledge and to the contrary it is alleged that the Authority disclosed all materials within its knowledge and more specifically answers as follows:

a. The status of easements and right-of-ways was not incomplete so as to impede performance of the work.

b. Defendant had no independent knowledge of the location or presence of concrete under State

Route 2024 but did provide a Change Order to compensate Plaintiff to saw-cut the roadway.

c. Defendant had no independent knowledge of the location or presence of concrete under State Route 2024 but did provide a Change Order to compensate Plaintiff to saw-cut the roadway.

d. Defendant incorporates its answers to Count IV of Plaintiff's Complaint by reference and makes them a part hereof.

e. Defendant incorporates its answers to Count IV of Plaintiff's Complaint by reference and makes them a part hereof.

f. Defendant incorporates its answers to Count III of Plaintiff's Complaint by reference and makes them a part hereof.

g. Defendant incorporates its answers to Count III of Plaintiff's Complaint by reference and makes them a part hereof.

h. Defendant incorporates its answers to Count III of Plaintiff's Complaint by reference and makes them a part hereof.

i. Defendant incorporates its answers to Count II of Plaintiff's Complaint by reference and makes them a part hereof.

j. Defendant designated one dump site which was provided. Any other dump site was the responsibility of contractor.

k. Defendant incorporates its answers to Count VI of Plaintiff's Complaint by reference and makes them a part hereof.

l. Defendant incorporates its answers to Count IV of Plaintiff's Complaint by reference and makes them a part hereof.

m. Defendant incorporates its answers to Count I of Plaintiff's Complaint by reference and makes them a part hereof.

144. Denied and on the contrary it is alleged that the Authority did not fail to disclose material facts within its knowledge.

145. Denied and on the contrary it is alleged that Defendant did not misrepresent any material facts.

146. Denied and on the contrary it is alleged that Defendant did not misrepresent any material facts associated with the work.

147. Denied and on the contrary it is alleged that Defendant did not misrepresent any material facts nor did the Authority have superior knowledge which it failed to share with Plaintiff. In further answer thereto it is alleged that any

damages alleged to have been incurred by Plaintiff were the direct result of its failure to diligently pursue construction of the project.

WHEREFORE, Defendant requests that Count XIII of Plaintiff's Complaint be dismissed.

COUNT XIV: BREACH OF CONTRACT

148. Defendant incorporates its answers to Paragraphs 1 through 147 of Plaintiff's Complaint by reference and makes them a part hereof.

149. Specifically denied and on the contrary it is alleged that the Contract Documents were not defective nor were the conditions encountered by Plaintiff materially different from the actual character or scope of Plaintiff's work. In further answer thereto it is alleged that the Contract Documents and interpretation speak for themselves.

150. Denied and on the contrary it is alleged that the as-built scope of the work is consistent with the scope of the work contemplated by the Contract.

151. Denied and on the contrary it is alleged that the as-built scope of the work was consistent with the scope of work contemplated by the Contract and in further answer thereto it is alleged that Plaintiff was properly compensated through Change

Orders for all extra work not encompassed within the scope of the Contract.

WHEREFORE, Defendant requests that Count XIV of Plaintiff's Complaint be dismissed.

COUNT XV: QUANTUM MERUT

152. Defendant incorporates its answers to Paragraphs 1 through 151 of Plaintiff's Complaint by reference and makes them a part hereof.

153. Admitted.

154. Denied and on the contrary it is alleged that the reasonable value of Plaintiff's services was substantially less than the amounts paid under the Contract.

155. Denied and on the contrary it is alleged that Plaintiff has been paid in accordance with the terms and conditions of the parties' Contract.

WHEREFORE, Defendant requests that Count XV of Plaintiff's Complaint be dismissed.

COUNT XVI: BREACH OF CONTRACT

156. Defendant incorporates its answers to Paragraphs 1 through 155 of Plaintiff's Complaint by reference and makes them a part hereof.

157. Admitted.

158. Denied in so far as it states that Plaintiff encountered a multitude of delays, changes and extra work and to the contrary it is alleged that said extra work was minimal in respect to the scope of the Project. It is admitted however, that Plaintiff continuously and repeatedly requested the Authority for extensions of time.

159. Denied and on the contrary it is alleged that Defendant at all times reasonably refused to extend the contract time to the extent that said requests were unreasonable; otherwise extensions were granted consistent with the time required to perform work beyond the scope of the contract.

160. States a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff requests that Count XVI of Plaintiff's Complaint be dismissed.

COUNT XVII: BREACH OF CONTRACT

161. Defendant incorporates its answers to Paragraphs 1 through 160 of Plaintiff's Complaint by reference and makes them a part hereof.

162. Admitted.

163. Admitted in so far as it states that Plaintiff initiated a multitude of repeated and continuous requests to extend contract time. It is denied, however, that said requests

were reasonable and consequently were denied for the reasons set forth in Defendant's answers to the various allegations of Plaintiff's Complaint. In further answer thereto it is alleged that Plaintiff's failure to maintain a project schedule was the cause of Plaintiff's having to perform work during the winter months in that the project was well overdue for substantial completion.

164. Denied and on the contrary it is alleged that Plaintiff at no time adopted extraordinary methods to perform the work required to complete the Project and to the contrary Plaintiff utilized only one pipeline crew until or on or about September 5, 2000 at which time a second and third crew was added on or about October 16, 2000. In further answer thereto it is alleged that Plaintiff did not commence construction of the Project until July 24, 2000.

165. Denied and on the contrary it is alleged that while Plaintiff regularly applied for payments, request for payment was not always submitted in accordance with the Contract Documents.

166. Denied and on the contrary it is alleged that the Contract speaks for itself.

167. Admitted in so far as it states that the Authority has assessed Plaintiff with liquidated damages. In further answer thereto it is alleged that said damages have been

assessed in accordance with the Contract, the provisions of which speak for themselves. In further answer thereto it is denied that the Authority refused to provide Plaintiff with a reasonable extension of Contract Time and to the contrary it did extend Contract Time sufficient to permit performance of all extra work required by the Contract.

168. States a conclusion of law to which no answer is required.

169. Denied and on the contrary it is alleged that the Contract and its interpretation speak for themselves.

170. States a conclusion of law to which no answer is required.

COUNT XVIII: BREACH OF CONTRACT

171. Defendant incorporates its answers to Paragraphs 1 through 170 of Plaintiff's Complaint by reference and makes it a part hereof.

172. Admitted.

173. Admitted.

174. Denied and on the contrary the Project Engineer issued a preliminary list of items to be completed with cost estimates.

175. Denied and on the contrary it is alleged that the terms of the Contract speak for themselves. In further

answer thereto it is alleged that Article 5.2.1(B) specifically provides as follows:

> "Retainage shall be five percent (5%) of the total amount of the work completed after fifty percent (50%) of the Work has been completed provided, however, that the character and the progress of the Work has been satisfactory to the OWNER and/or the ENGINEER, on recommendation by the ENGINEER, and there is no specific cause for greater cause for withholding."

176. Denied and on the contrary it is alleged that the Contract speaks for itself.

177. Denied and on the contrary it is alleged that all items have not been completed.

178. Admitted but in further answer thereto it is alleged that Defendant has withheld amounts necessary to repair and/or replace defective work and to finish incomplete work.

179. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is specifically denied and on the contrary it is alleged that Article 5.2 of the Contract authorizes the Authority to withhold amounts greater than the specified retainage.

WHEREFORE, Defendant requests that Count XVIII of Plaintiff's Complaint be dismissed.

COUNT XIX: BREACH OF CONTRACT

180. Defendant incorporates its answers to Paragraphs 1 through 179 of Plaintiff's Complaint by reference and makes them a part hereof.

181. Denied and on the contrary it is alleged that Plaintiff has not completed the work and to the contrary has failed and/or refused to replace or repair defective work and resolve outstanding complaints of property owners including the disruption of property beyond the confines of the easements obtained from the property owners.

182. Denied and on the contrary it is alleged that Plaintiff's failure to complete the work in full has caused the delays and extended close out of the Project.

183. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XIX of Plaintiff's Complaint be dismissed.

COUNT XX: BREACH OF CONTRACT

184. Defendant incorporates its answers to Paragraphs 1 through 183 of Plaintiff's Complaint by reference and makes them a part hereof.

185. Denied and on the contrary it is alleged that during the course of performance not all of Plaintiff's

applications for payment were submitted in accordance with Article 5 of the Contract and Article 14 of the General Conditions. To the contrary Plaintiff on numerous occasions requested payment for work which was not completed and work which was defective. In further answer thereto it is alleged that Plaintiff failed to submit pay applications within the requisite time frame and finally that payment was made in accordance with the Contract Documents.

186. Denied and in answer thereto Defendant incorporates its answer to Paragraph 185 of Plaintiff's Complaint by reference and makes it a part hereof. Finally, it is denied that the work is completed or that Defendant has withheld excessive detention and to the contrary is withholding payment to Plaintiff in accordance with Article 5.2 and Article 14.02(D) and (B.5) of the Contract's General Conditions.

187. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XX of Plaintiff's Complaint be dismissed.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE

188. Defendant incorporates its answers to Paragraphs 1 through 187 of Plaintiff's Complaint by reference and makes them a part hereof.

189. Admitted.

190. States a conclusion of law to which no answer is required.

191. Sets forth a statutory provision to which no answer is required.

192. Denied and on the contrary it is alleged that the Defendant at all times made payment to the Plaintiff in accordance with the Contract Documents and in further answer thereto acted in good faith to the extent payments were withheld or delayed.

193. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XXI of Plaintiff's Complaint be dismissed.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE
(Improperly Numbered)

194. Defendant incorporates its answers to Paragraphs 1 through 193 of Plaintiff's Complaint by reference and makes them a part hereof.

195. Admitted.

196. Admitted.

197. States a conclusion of law to which no answer is required.

198. Denied in the following particulars:

a. Denied. At all times Defendant made payment to Plaintiff in accordance with the Contract and to the extent payments were delayed or withheld, the Defendant acted in good faith belief that it was entitled to do so under the terms of the Contract.

b. Denied and on the contrary Defendant has acted in good faith belief as to its right under Articles 5.2 and 14.02 of the Contract.

c. Denied and on the contrary it is alleged that Defendant at all times followed the recommendations of its Engineer.

d. Denied and on the contrary it is alleged that Defendant had no knowledge of the conditions identified by Plaintiff and in further answer thereto it is alleged that Plaintiff was obligated under the Contract to effect its own inspection of the property and further had the right to be compensated for any additional excavation necessary to ascertain the conditions about which it complains.

e. States a conclusion of law to which no answer is required. To the extent that an answer may be required, it is generally denied.

f. Denied and on the contrary it is alleged that the status of easements, right-of-ways and permits in no manner impacted the work to be performed by Plaintiff nor was Plaintiff at any time required to discontinue work.

g. Denied and on the contrary it is alleged that Defendant was required to provide one dump site.

h. Denied and on the contrary it is alleged that no work was required by PennDOT and in further answer thereto to the extent that extra work was required, Plaintiff was compensated.

i. Denied to the extent that said allegation implies that Plaintiff had an obligation to depict and locate underground utilities or that it had knowledge of the location of said utilities.

j. Denied in so far as it implies that Plaintiff had an obligation to provide a winter shutdown and to the contrary it is alleged that a winter shutdown was rendered impossible by Plaintiff's continued construction delays.

k. Denied that Defendant at any time discriminated against Plaintiff on the basis of sex.

199. States a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff requests that Count XXI of Plaintiff's Complaint be dismissed.

COUNT XXII: CIVIL RIGHTS ACTION

200. Defendant incorporates its answers to Paragraphs 1 through 199 of Plaintiff's Complaint by reference and makes them a part hereof.

201. No answer required.

202. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

203. Denied in that after reasonable investigation Defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.

204. Denied and on the contrary it is alleged that the Authority and its male agents at no time has a matter of policy or custom consistently, willfully or otherwise discriminated against Plaintiff based upon sex.

a. Denied and on the contrary it is alleged that HRI was granted a winter shutdown because that company had substantially completed its work. Conversely Plaintiff did not request a winter shutdown until February 16, 2001 and was not substantially completed. In further answer thereto HRI was held to

the same requirements with regard to the use of alternate materials as was Plaintiff. See Exhibit "H". In further answer thereto it is alleged that HRI provided Defendant with a list of subcontractors with its bid as required by the Contract Specifications. Conversely Plaintiff failed to seek approval of subcontractors under four months after Plaintiff was given Notice to Proceed. Finally, the Authority did not prohibit its Engineer from communicating orally with the Plaintiff and to the contrary it was the decision of the Engineer to discontinue oral communications with Plaintiff as appears from Exhibit "G"

b. Admitted but in further answer thereto it is alleged that the Engineer's decision to communicate with Plaintiff in writing was prompted by Plaintiff's ongoing propensity to engage in verbal misrepresentations which placed her credibility at issue with the Project Engineer.

c. Denied. This is a general no-specific allegation to which Defendant makes a general denial in that after reasonable investigation Defendant is aware of no comments made by its male agents indicating a general disrespect for women.

d. Denied and to the contrary it is alleged that the Authority after reasonable investigation is aware of no comments made by its male agents casting doubt on Plaintiff's ability to perform the work because Plaintiff was a female. It is admitted, however, that various agents of the Authority including females have expressed serious concern as to the quality and efficiency of the work performed by Plaintiff generally.

e. Denied and on the contrary it is alleged that neither the Authority nor its male agents have at any time attempted to intimidate and bully the female owner of the Plaintiff. To the contrary it is alleged that Plaintiff has consistently, willfully, customarily and purposefully threatened the Authority with her status as a WBE and specifically has threatened the Authority with a claim of discrimination in an effort to coerce additional money and time from the Authority.

f. Admitted as stated but in further answer thereto it is alleged that it is the custom of the Authority to address letters to all females as MS and did not reserve that title for Ms. Marzella. In further answer thereto it is alleged that while the letters directed to Ms. Marzella were signed by a male member of

the Authority, those letter were composed by the Authority's secretary who is female.

205. States a conclusion of law to which no answer is required.

206. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is generally denied.

207. States a conclusion of law to which no answer is required.

WHEREFORE, Defendant requests that Count XXII of Plaintiff's Complaint be dismissed.

COUNTERCLAIM

NOW COMES the Plaintiff in the Counterclaim, Wallaceton-Boggs Municipal Authority and sets forth the following Counterclaim against the Defendant in the Counterclaim, Continental Construction, Inc.:

208. That the Plaintiff in the Counterclaim incorporates its answers to Paragraphs 1 through 207 of the Plaintiff's Complaint by reference and makes them a part hereof.

COUNT I

209. That bid proposals for the Wallaceton-Boggs Municipal Authority (Authority) Sanitary Sewer Project (Project) were opened on April 6, 2000.

210. That following inspection of the bids, it was determined that Continental Construction, Inc. (CCI) was the low bidder.

211. That the Authority awarded the Contract for construction of the Project to CCI and a copy of all Contract Documents was signed by the parties on or about June 21, 2000.

212. That both parties to this litigation are in possession of a complete copy of all Contract Documents.

213. That subsequent to the awarding of the bid, Mrs./Ms. Julie Marzella who is believed by the Authority to be a principal officer of CCI informed the Authority that she had underbid the Contract and demanded that the Authority disclose the amount of funding set aside for contingencies.

214. That the Authority issued a Notice to Proceed to CCI following which CCI failed to initiate construction activities for a period of 34 days following receipt of said Notice.

215. That at all times during the course of construction the officers, employees and agents of CCI adopted an adversarial posture toward the Authority, its employees and agents.

216. That during the course of construction, CCI failed to adopt a viable construction plan or to adhere to a construction timetable.

217. That during the course of the construction, CCI intentionally and willfully engaged in a course of conduct so as to cause construction delays and in the following particulars:

a. CCI represented to the Authority that manholes covers manufactured by McGill Sanitary were approved by PennDOT when in fact said manhole covers were not approved and therefore could not be installed within PennDOT right-of-ways without contraversing PennDOT regulations and Contract Specifications.

b. CCI's failure to adopt appropriate E&S Controls during the course of construction prompted DEP to demand revision to the Authority's erosion and sedimentation plan which was approved by DEP on March 22, 2000.

c. CCI requested a 92 day extension as a result of a DEP order to halt construction in the Simeling Run Area although there was adequate and ample work that could be performed upon other areas of the Project.

d. CCI made unreasonable and vexatious claims for unforeseen and differing site conditions

despite the fact that the plans, specifications and bid documents clearly required all bidders to inspect the site in advance and to fully investigate site conditions including the substrata.

e. In addition to failing to make a proper site inspection as required by the Contract Documents, Specifications and Bid Documents, CCI failed to inspect the right-of-way needs of its excavation for which activities it would have been entitled to be compensated for extra work under the Contract.

f. CCI demanded unreasonable compensation to relocate a storm water line in a trench which it had already excavated in order to install the sanitary sewer line and in addition requested an unreasonable extension of time on the Contract.

g. CCI requested unreasonable compensation and extension of work schedule to relocate manholes A51 and A53.

h. CCI requested unreasonable compensation and extension of work schedule to relocate manholes A21 through A28.

i. CCI presented Authority with a fraudulent claim for delivery of 2876.36 cubic yards of fill material which material was never delivered to the site.

j. CCI refused to comply with its obligations under the Contract Documents and Specifications to perform necessary road repairs.

k. CCI presented a claim for additional compensation alleging that the Authority was to provide two on-site dump sites when in fact it was made clear to all contractors including CCI that one dump site would be provided on the Darrell Dufour property.

l. CCI presented a claim to the Authority for installing additional wye's for $80 per unit which amount was unreasonably excessive and therefore rejected by the Authority which instructed CCI not to install the wyes and for which CCI is seeking compensation.

m. Mrs./Ms. Marzella repeatedly threatened the Authority with a Civil Rights Action alleging that CCI was a Woman-owned Business Enterprise (WBE).

n. Mrs./Ms. Marzella repeatedly made verbal misrepresentations to the Authority's Engineer to the extent that the Engineer by letter dated October 4, 2000 requested that all future communications between the Engineer and CCI be conducted in writing.

o. As a direct result of the obstreperous, vexations, intentional and fraudulent conduct on the part of CCI, the Project was delayed to the extent that

substantial completion did not occur until April 18, 2001.

p. Final construction has not been completed on the Project and it remains uncompleted at the time of the filing of this Counterclaim.

WHEREFORE, Plaintiff in the Counterclaim claims delay damages from Defendant in the Counterclaim in excess of Twenty-Five Thousand ($25,000.00) Dollars as provided by the Contract.

COUNT II

218. That Plaintiff in the Counterclaim incorporates Paragraphs 1 through 217 hereof by reference and makes them a part hereof.

219. That as a result of the construction delays incurred by the obstreperous, vexatious, intentional and fraudulent conduct of the Defendant in the Counterclaim, Plaintiff in the Counterclaim has incurred hard costs for additional inspection fees in the amount of $122,102.17.

220. That as a result of the construction delays incurred by the obstreperous, vexatious, intentional and fraudulent conduct of the Defendant in the Counterclaim, Plaintiff in the Counterclaim has incurred additional interest costs in the amount of $7,310.40.

221. That as a result of the construction delays incurred by the obstreperous, vexatious, intentional and fraudulent conduct of the Defendant in the Counterclaim, Plaintiff in the Counterclaim has incurred clerical and rental costs in the amount of $7,110.00.

WHEREFORE, Plaintiff in the Counterclaim claims damages from Defendant in the Counterclaim in excess of Twenty-Five Thousand ($25,000.00) Dollars.

COUNT III

222. That the Plaintiff in the Counterclaim incorporates Paragraphs 1 through 221 hereof by reference and makes them a part hereof.

223. That CCI has failed to compete construction of the Project or to correct defective work.

224. That a list of defects and the cost of correct them to the extent available at the time of filing this Counterclaim is attached hereto as Exhibit "I".

WHEREFORE, Plaintiff in the Counterclaim claims damages against Defendant in the Counterclaim in excess of Twenty-Five Thousand ($25,000.00) Dollars.

James A. Naddeo
Attorney for Defendant

June 14, 2000

Continental Construction, Inc.
P.O. Box 126
Johnsonburg Road
Ridgeway, PA 15853

Attention: Ms. Julee M. Marzella, Secretary/Treasurer

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01 : Sanitary Sewer
Shop Drawing Submittals

Dear Ms. Marzella:

Enclosed you will find your shop drawing submittals numbered1 to 11. As per your request, we have reviewed and take no exceptions to these submissions. Please be advised that this review was done as courtesy, and these submissions will not be considered binding until the Agreement has been executed and the Notice to Proceed has been issued.

If you have any questions or require further information, please contact our office.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manger

TAG:mm

Enclosures

Cc: File 3334-2-Contract 2000-01

K:\PROJECTS\3334\3334-2\Contract 01\docs\letter\S.top Dwg rvw 1-11.doc

EXHIBIT "A"

Pennsylvania Department of Environmental Protection

208 West Third Street, Suite 101
Williamsport, PA 17701-6448

March 22, 2000

Northcentral Regional Office

Fax 570-327-3565

Richard J. Shimmel, Chairman
Wallaceton-Boggs Municipal Authority
P.O. Box 97
West Decatur, PA 16878

Re: General Permit Acknowledgment
DEP General Permit File No. GP051700501
and GP041700501
Wallaceton Borough and Boggs Township
Clearfield County

Dear Mr. Shimmel:

This will acknowledge receipt of your notification (copy enclosed) and registers your use of a General Permit issued by the Department of Environmental Protection. You are responsible for assuring the work is done in accordance with the drawings and conditions contained in the General Permit. You may proceed with your project after making the required notifications stipulated in the General Permit and securing all other approvals that may be necessary.

Also enclosed is your Federal Clean Water Act Section 404 authorization in the form of the Pennsylvania State Programmatic General Permit (PASPGP-1).

If you have any questions, please call Donald Ericson at 570-321-6561.

Sincerely,

F. Alan Sever, P.E.
Chief, Soils & Waterways Section
Water Management Program

Enclosure

cc: Pa. Fish & Boat Commission, Northcentral Regional Office
Clearfield County Conservation District
U.S. Army Corps of Engineers, Baltimore District
Andrew S. Levine, P.E.
File

EXHIBIT "B"

FAS/DE/bls

EXHIBIT C

ACKNOWLEDGED
DATE: 3/22/00
GP 05170050 1

Notification to Use
BDWM-GP-5
Utility Line Stream Crossings

I/We, Wallaceton-Boggs Municipal Authority (owner name(s)), hereby notify the Bureau of Dams and Waterway Management of our intent to use Sample Drawing No. 1 to install

42,000 L.F. of Gravity Santiary Sewer, 8" PVC pipe
(size and description of utility line)

across/along Laurel Run, un-named streams, and wetland
(name of stream, body of water, or wetland)

at ~~approx~~ various points - see attached table
(describe location)

in Boggs Township & Wallaceton Borough (municipality) Clearfield (county)

I/We have attached a LOCATION MAP similar to that shown on the sample drawings indicating where the utility line will be installed.

I/We certify that a copy of this notification was sent this day 12/09/99 (date)

to Boggs Township & Wallaceton Borough (municipality), and Clearfield (county) in which the work will be performed.

Signed: [signature]
(owner or authorized representative)

P.O. Box 97
(owner address)

West Decatur, PA 16878

(814) 243 - 3626
(owner telephone number)

I/We hereby notify the Bureau that BDWM-GP-8, Temporary Road Crossing will also be utilized during the installation of the utility line.

Signed: N/A

Send to

WALLACETON – BOGGS SANITARY SEWER CONSTRUCTION PROJECT
DECEMBER 1999

RECEIVED
MAR 2 2000
WATER MGMT/DEP

TABLE A – STREAM CROSSINGS

Crossing No.	Stream Name	Sheet No.	Length of Crossing L.F.	Description
1	Laurel Run	5	30	90' west of LR 17122 and 190' north of Church Hill Road. 8" PVC gravity sewer between MH A-8 and MH A-9
2	Unnamed Tributary to Laurel Run	5	15	480' east of LR 17122 and 60' south of Boggs Twp. Bldg. 8" PVC gravity sewer between MH A-4 and MH A-5
3	Unnamed small stream	14	20	200 ' west of SR 0322 and 210' east of Arc Road (T-676) 8" PVC gravity sewer between MH A-37 and MH A-38
4	Unnamed small stream	16	35	870' south of Reed Street and 200' east of SR 2029 8" PVC gravity sewer between MH A-46 and MH A-47.
5	Unnamed small stream	16	35	600' south of Reed Street and 260' east of SR 2029 8" PVC gravity sewer between MH A-47 and MH D-1

Total = 135 ft. < 250 ft – OK to use SPGP

WALLACETON – BOGGS SANITARY SEWER CONSTRUCTION PROJECT
DECEMBER 1999

TABLE B – WETLAND CROSSINGS

Crossing No.	Wetland Designation	Sheet No.	Length of Crossing L.F.	Description
1	W	4	250 ✓	170' NE of Company Road 8" PVC gravity sewer between MH A-2 and MH A-3
2	V	4	30	580' NE of Company Road 8" PVC gravity sewer between MH A-1 and MH A-2
3	D	12	90	65' SW of SR 0322 and 260' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-32 and MH A-33
4	D	12	15	65' SW of SR 0322 and 360' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-32 and MH A-33
5	D	12	20	50' SW of SR 0322 and 400' SE of Laurel Run Rd. 8" PVC gravity sewer between MH A-31 and MH A-32
6	B	13	10	160' SW of SR 0322 and 700' NW of T-676 8" PVC gravity sewer between MH A-35 and MH A-36
7	H	15	100	215' East of SR 2029 8" PVC gravity sewer between MH A-43 and MH A-45
8	G	15	20	170' East of SR 2029 8" PVC gravity sewer between MH A-45 and MH A-46
9	F	15	25	170' East of SR 2029 8" PVC gravity sewer between MH A-45 and MH A-46
10	H	21	130	165' East of SR 2029 8" PVC gravity sewer between MH A-44 and MH B-1
11	P	28	20	40' SE of Reed Street 8" PVC gravity sewer between MH S-1 and MH S-2
12	Q	28	95	80' NW of Reed Street 8" PVC gravity sewer between MH S-3 and MH S-4
13	U	28	25	570' NW of Reed Street 8" PVC gravity sewer between MH S-3 and MH S-4
14	S/T	29	420 ✓	840' NW of Reed Street 8" PVC gravity sewer between MH S-5 and MH S-7
15	R	29	75	1300' NW of Reed Street 8" PVC gravity sewer between MH S-6 and MH S-8
16	V	38	125	590' NE of Company Road 8" PVC gravity sewer between MH AC-1 and MH A-1

Total = 1450 ft × 20 ft (easmt) = 29000 ft² ≤ 1 acre (SPGP ok.)

300 × 150 = 45000

3630-PM-WQ0503 Rev. 7/98

FOR DEPT. USE ONLY

ACKNOWLEDGED:
DATE 3/22/00
GP 6417005 01

EXHIBIT C

NOTIFICATION TO USE
BDWM-GP-4
Intake and Outfall Structures

I/We, Wallaceton-Boggs Municipal Authority
(owner name(s))

hereby notify the Department of Environmental Protection of our intent to use

Drawing No. 3 to install a Penn DOT Type D-W

outfall structure
(description of intake or outfall structure)

across/along Laurel Run at a point approximately 600 feet east of L.R. 17122
(name of stream)

in West Decatur
(describe location)

in Boggs Township (municipality), Clearfield (county).

I/We have attached a LOCATION MAP similar to that shown on Drawing No. 1 indicating where the intake or outfall structure will be installed.

I/We certify that a copy of this notification was sent this day December 9, 1999 (date) to

Boggs Township (municipality) and Clearfield (county)

where the work will be performed.

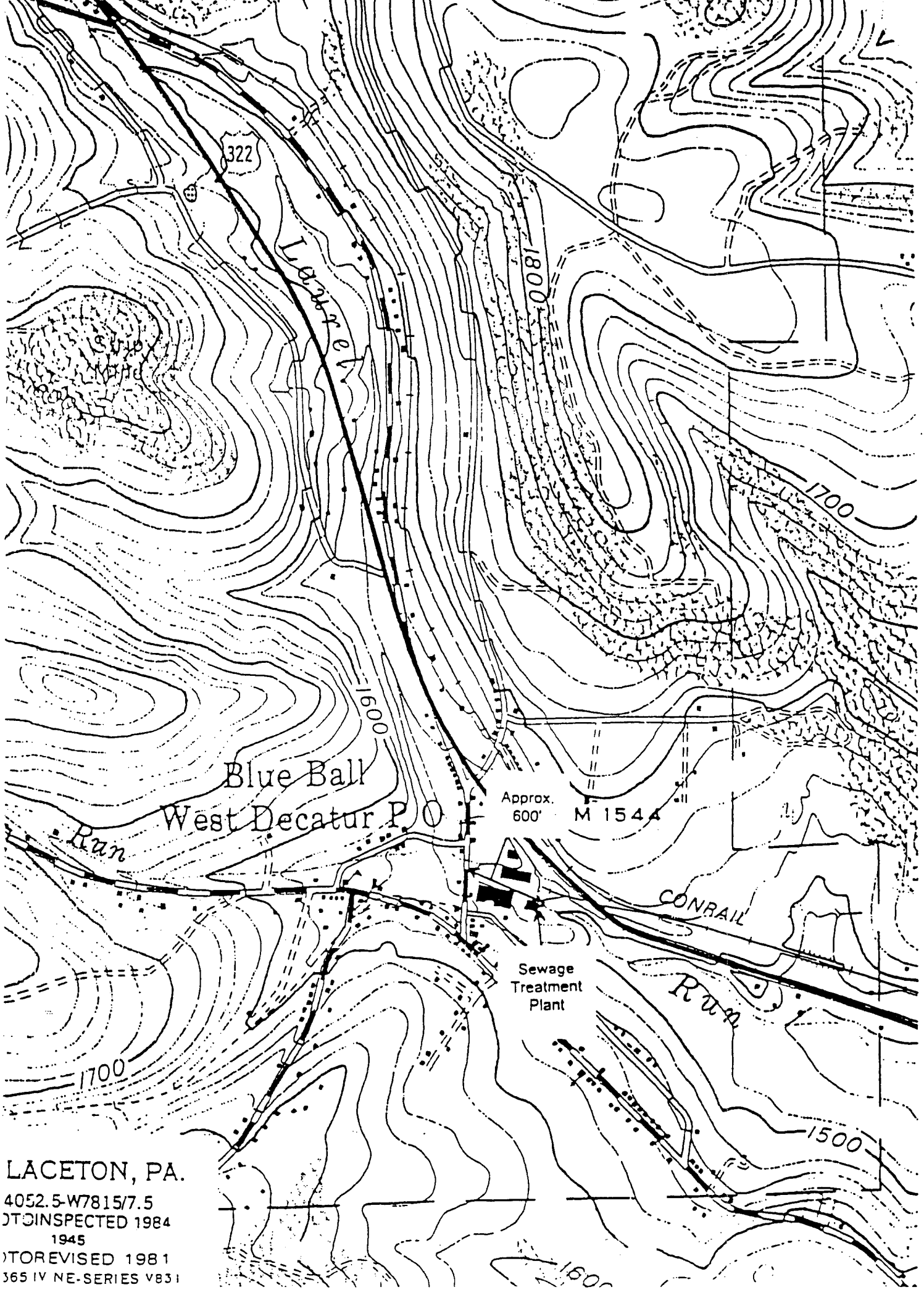
Signed: Richard J. Thomas
(owner or authorized representative)

P.O. Box 97
(owner address)

West Decatur, PA 16878

(814) 342-3626
(owner telephone number)

Send to one of the addresses on "Exhibit B" or the "County Conservation Districts" List.



LACETON, PA.

4052.5-W7815/7.5

)TOINSPECTED 1984

1945

)TOREVISED 1981

365 IV NE-SERIES V831

PENNSYLVANIA STATE PROGRAMMATIC GENERAL PERMIT
PASPGP-1
DECEMBER 1995

TO WHOM IT MAY CONCERN:

Upon the recommendation of the Chief of Engineers, and under the provisions of Section 404 of the CWA, as amended, and Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), the Secretary of the Army hereby authorizes the discharge of dredged, excavated, or fill material or structures into waters of the United States, including wetlands. These discharges and structures must comply with all the terms and conditions identified in this SPGP.

It has been determined that the project as authorized by the PA Department of Environmental Protection (PADEP) Authorization GPC51700501 qualifies for the PA SPGP-1. Accordingly, you are authorized to undertake the activity pursuant to: GP041700501

1. Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

2. Section 404 of the Clean Water Act (33 U.S.C. 1344).

You are authorized to perform work in accordance with the terms and conditions specified below.

For an activity involving a structure or discharge of dredged, excavated, or fill materials into waters of the United States to be authorized by this SPGP, it must meet the following requirements and conditions:

1. Proper maintenance. Any fill or work authorized shall be properly maintained, including maintenance to ensure public safety.

2. Erosion and siltation controls. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.

3. Aquatic life movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

4. Equipment. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance, including avoiding the use of such equipment, if possible.

5. National Wild and Scenic Rivers. Activities which occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system are not authorized by this SPGP. These designated rivers include:

(a) The Upper Delaware Scenic and Recreational River beginning at Hancock, New York, and continuing 73.4 river miles to Hill Rift, Pennsylvania.

(b) The Middle Delaware Scenic and Recreational River as it flows through the Delaware Water Gap National Recreation Area.

The Study Rivers include:

(a) The Lower Delaware River beginning seven river miles north of Belvidere, New Jersey, continuing to Washington Crossing, Pennsylvania, including Cooks Creek, Tinicum Creek and Tohickon Creek.

(b) The White Clay Creek watershed including all of its tributaries.

6. Tribal rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. Endangered Species. If the proposed activity may affect a Federal listed species or a species proposed for listing or their critical habitat, a District Engineer must initiate consultation with FWS or NMFS in accordance with the Federal Endangered Species Act (ESA) prior to authorization of the activity under the PASPGP-1. No activity is authorized under the PASPGP-1 which is likely to, individually or cumulatively, jeopardize the continued existence of a threatened or endangered

species or a species proposed for such designation, as identified under the ESA, or which is likely to destroy or adversely modify the critical habitat of such species identified under the ESA. If an activity is authorized under the PASPGP-1, and during construction a Federal listed species or critical habitat is found to be present, all work must cease and the permittee must notify the Corps of Engineers. The PASPGP-1 authorization is suspended until the conclusion of Section 7 consultation in accordance with the ESA. The PASPGP-1 authorization may be revoked for that specific project if the species or critical habitat is adversely affected. If it is determined that there will be no adverse effect or that an adverse effect can be mitigated, the PASPGP-1 will be reinstated for that specific activity with any appropriate mitigation conditions. Furthermore, persons have an independent responsibility under Section 9 of the ESA to not engage in any activity that would result in a "take" of a Federal listed species.

8. Cultural Resources. No activity is authorized under the PASPGP-1 which may adversely affect cultural resources listed or eligible for listing in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act are met. The applicant must notify the State Historic Preservation Officer (SHPO), at the Pennsylvania Historical and Museum Commission (PHMC), using the PADEP Historical Resources Determination Notice Form and include a copy of the form as proof of notification in their application. Upon the discovery of the presence of a previously unknown historic or archaeological site, all work must cease and the permittee must notify the SHPO and the Corps of Engineers. The SPGP authorization is suspended until it is determined, through the Section 106 consultation process, whether the activity will have an adverse effect on the cultural resource. The authorization under the PASPGP-1 may be reactivated or modified, through specific conditions if necessary, if it is determined that the activity will have no adverse effect on the cultural resource. The PASPGP-1 authorization may be revoked for the specific activity if the cultural resource will be adversely affected.

9. Water supply intakes. No discharge of dredged, excavated, or fill material or structure may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization, unless Corps approved and appropriate mitigation measures are to be implemented which will protect the water supply.

10. Shellfish production. No discharge of dredged, excavated, or fill material or structure may occur in areas of concentrated shellfish production, unless the discharge is directly related to an authorized shellfish harvesting activity.

11. Suitable material. No discharge of dredged, excavated, or fill material or structure may consist of unsuitable material or solid waste (e.g., trash, debris, car bodies, etc.) and all material discharged must be free from toxic pollutants in toxic amounts pursuant to Section 307 of the CWA.

12. Mitigation. Discharges of dredged, excavated, or fill material or structures into waters of the United States must be avoided and minimized to the maximum extent practicable at the project site. Once avoidance and minimization of unavoidable adverse impacts has been demonstrated, compensation mitigation may be used to offset unavoidable adverse impacts.

13. Spawning areas. Excavation, discharges or structures in spawning or nursery areas shall not occur during spawning seasons. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of the year.

14. Obstruction of high flows. To the maximum extent practicable, discharges or structures must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

15. Adverse impacts from impoundments. If the discharge or structures creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, including impacts to wetlands, shall be minimized to the maximum extent practicable.

16. Waterfowl breeding areas. Discharges or structures in breeding areas of migratory waterfowl must be avoided to the maximum extent practicable.

17. Removal of temporary fills. Any temporary fills or structures must be removed in their entirety and the affected areas returned to their preexisting elevation.

18. Inspections. The permittee shall permit a District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to ensure that the work is being performed in accordance with all the terms and conditions of the PASPGP-1.

19. Single and Complete Projects. The PASPGP-1 shall not be used for piecemeal work and shall be

applied to single and complete projects. All components of a single project shall be treated together as constituting one single and complete project. All planned phases of multi-phased projects shall be treated together as constituting one single and complete project. For purposes of this condition, all previously authorized phases of multi-phased projects will remain authorized, unless expired, and any additional planned phases will be evaluated for authorization, cumulatively with the previously authorized phases as a single and complete project. This general permit shall not be used for any activity that is part of an overall project for which an individual permit is required.

20. False and Incomplete Information. If any of the information contained in the Pennsylvania/Corps Joint Permit Application, PADEP General Permit registration, PADEP Environmental Assessment and/or plans is found to be in error, falsified, and/or incomplete, the PASPGP-1 authorization may be subject to modification, suspension, or revocation in accordance with 33 CFR 325.7.

21. Section 404(b)(1) Guidelines. No activity may be permitted under the PASPGP-1 that is not in full conformity with the Section 404(b)(1) Guidelines. The Corps is responsible for insuring compliance with the Guidelines.

22. Agricultural activities. For Pennsylvania waivers 7 or 8 to qualify for the PASPGP-1, the activities must be part of an established (i.e., on-going) farming, silviculture, or ranching operation. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land.

23. Expiration Date. This authorization is valid for the same period as the project specific PADEP authorization, not to exceed three years; and shall not exceed three years for PADEP General Permits.

By Authority of the Secretary of the Army:

Colonel Randall R. Inouye, P.E.
Baltimore District Engineer

Lieutenant Colonel Robert P. Magnifico
Philadelphia District Engineer

Colonel Stephen B. Massey
Pittsburgh District Engineer

SWEETLAND ENGINEERING & ASSOCIATES, INC.
600 SCIENCE PARK ROAD
STATE COLLEGE, PA 16803
PHONE: (814) 237-6518
FAX: (814) 237-1488

FIELD SPEED MEMO

TO: Centennial Construction

FROM: Rick Senior (SEA)

DATE: 10-30-00

SUBJECT: Moving A Line MH-21 to MH-28

SEA JOB #: 3334-2 CONTRACT NO. 2000-01

DESCRIPTION: This is a work direction to move manhole along A Line to MH 21 to MH-28 away from the roadway a maximum of 10' to be directed by Sue's field representative. The contractor is to remove the 163' of line that was already placed out of MH-20. The work direction is to show a credit due for the saw cutting of the road. This is being issued to clarify that the contractor is not prepared for saw cutting operations as specified. This will be paid by unit prices of the bid documents.

Engineer Representative: Rick Senior

Contractor Representative:

Owner Representative: Bill Brown

E:\PROJECTS\CONST.ADM\FIELDMEM Bill Brown
Jack Senior

EXHIBIT "C"

P

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
500 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

October 31, 2000

Continental Construction
PO Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01, Sanitary Sewer Construction Project
Work Directive No. 1

Dear Ms. Marzella:

In accordance with the WBMA directive, you are hereby directed to proceed with the realignment of the Sanitary Sewer Line at Manholes A-20 through A-28.

The attached Work Directive is to relocate the above mentioned Manholes to eliminate any additional costs due to sawing of the additional pavement thickness, and eliminate additional work to the Contractors schedule.

Upon review of previous documentation concerning equipment used by CCI to saw cut the pavement, an equipment rate of $16.50/hour was used and $30.36/hour for an operator. The equipment used by CCI will cut an approximate 125 LF/hour which equals a credit of $2.66/LF X 2,400 LF equals $6,400.00.

With removal of the sanitary line from under paved areas, a credit for deletion of pavement is required. SEA has estimated a deletion of 800 SY of paving restoration. With unit costs of $10.40/SY for 4" of BCBC and $5.85 for 1 ½ of ID-2 Wearing Course, the approximate credit for paving restoration is $13,000.00.

EXHIBIT "D"

There will be a minimal cost for additional grass area restoration due to relocation of the sanitary line. CCI had previously submitted .25 cents/LF for restoration of grass areas. Upon review SEA amended that estimate to .50 cents/LF for restoration of grass areas, which would equate to an add of $1,200.00.

CCI has already placed an approximate 163LF of sanitary line from MH A-20 towards MH A-21. The revised location of MH A-21 will require removal and replacement of the above mentioned 163 LF of sanitary line.

The Authority will pay for the relocation of this line by use of unit cost for sanitary line installation 6'-8' deep of $19.00/LF or approximately $3097.00 increase to be added by units installed.

The attached summary is only approximate, the quantities will be verified to expedite the appropriate Change Order.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

Cc: WBMA
George S. Test, Esquire
U.S. Army Corps of Engineers, Pablo Colon-Garay
PennVEST, Bill Malinich
File 3334-2;Contract 2000-01

Approximate Credit Due for Sanitary Line Relocation

Approximately 2400 LF of Saw Cutting not needed	$ 6,408.00
Approximately 800 SY pavement restoration	$13,000.00
Subtotal Credits	**$19,408.00**
Add for Grass Restoration 2400 LF	$ 1,200.00
Add by Unit Cost to bid items for replacement Of 163 LF of line	$ 3,097.00
Subtotal Adds	**$ 4,297.00**

Summary:

Credits	$19,408.00
Adds	- $ 4,297.00
Credit to the Authority	$15,111.00

WORK CHANGE DIRECTIVE

No. 1

DATE OF ISSUANCE 10/31/00 EFFECTIVE DATE 10/31/00

OWNER Wallaceton-Boggs Municipal Authority

CONTRACTOR Continental Construction, Inc.
Contract: Contract 2000-01
Project: Sanitary Sewer Construction Project
OWNER's Contract No. 2000-01 ENGINEER'S Project No. 3334-2

You are directed to proceed promptly with the following change(s):

Description:
Move Manholes A21 through Manholes A-28 from the roadway, a maximum of 10' as directed by Sweetland Engineering & Associates, Inc.'s RPR. Remove the approximate 163 LF of sanitary line previously placed out of Manhole A-20. The Contractor will be paid unit price for replacement of the 163' of line installed in revised alignment

Purpose of Work Change Directive:
To move the sanitary sewer line from in the roadway to eliminate additional cost for extra pavement thickness, and eliminate extra work for the Contractor.

Attachments: (List documents supporting change)
See Attached Letter, and Field Speed Memo.

If OWNER or CONTRACTOR believe that the above change has affected Contract Price any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in Contract Price:

- [x] Unit Prices
- [ ] Lump Sum
- [ ] Cost of the Work To be determined

Estimated **(decrease)** in Contract Price:
$ 15,111.00
If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract Times: 0 days
Substantial Completion: 180 days;
Ready for final payment: 240 days.

RECOMMENDED:
Sweetland Engineering & Associates, Inc.
ENGINEER
By:

AUTHORIZED:
Wallaceton-Boggs Municipal Authority
OWNER
By Christopher L. Burns

EJCDC No. 1910-8-F (1996 Edition)
Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

CORPORATE OFFICE:
600 Science Park Road
State College, PA 16803
(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

November 1, 2000

Continental Construction
PO Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: Wallaceton-Boggs Municipal Authority
Contract 2000-01, Sanitary Sewer Construction Project

Dear Ms. Marzella:

To help clarify any questions concerning the Work Directive No. 1 associated with the relocation of MH A21 through MH A-28, we have the following comments.

The equipment rate was established previously for an earlier request for a Change Order for roadway saw cutting (September 28, 2000 saw cut pavement cost adjustment request). The amount of roadway cut per hour was established by visual verification of the CCI equipment in use on another section of roadway.

The estimated 800 SY of pavement restoration was established by estimating an average of 3' wide by an approximate 2400 LF of pavement area that would have required replacement. Any pavement restoration not done will be adjusted as a Change Order at the completion of the project by use of a quantities adjustment Change Order.

The additional fees for grass restoration was based on actual figures submitted by CCI and amended by SEA.

In addition, the replacement of the 163 LF of pipe previously installed, the Contractor will be paid when pipe as been replaced in accordance with applicable bid Item.

In summary, the paving restoration, the pipe replacement, and the restoration of Grass areas will be adjusted by the use of unit cost pay items. The only item that will require an executed change order is the credit for not saw cutting the road. When we have finalized the quantities of sawing that was deleted, we will prepare the proper change order request.

As stated in our earlier correspondence all MH relocation will be coordinated through SEA RPR on-site with a maximum movement of 10' from the original location. There are not any easements affected by the relocation because there is a 60 foot Township Right-of-Way in this area.

Should CCI choose not to proceed in accordance with Work Directive No. 1, they will be in violation of the Contract Requirements. If the Contractor disagrees with the determination of the Engineer, they are to proceed in accordance with paragraph 10.05 of the General Conditions (reference G.C. 10.01 A and B).

We are hopeful that this clarifies any questions you may have concerning the relocation of manholes. Please inform SEA's RPR of your proposed schedule to begin work in this area to allow coordination of manhole locations.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

Cc: WBMA
George S. Test, Esquire
U.S. Army Corps of Engineers, Pablo Colon-Garay
PennVEST, Bill Malinich
File 3334-2;Contract 2000-01

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SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

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600 Science Park Road
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(814) 237-6518
Fax: (814) 237-1488

BRANCH OFFICE:
912 Elmira Street
Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

November 16, 2000

Continental Construction, Inc.
P.O. Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01; Sanitary Sewer Construction Project

Dear Ms. Marzella:

In accordance with the WBMA, we are hereby issuing Notice to Proceed with work in accordance with Work Directive No. 1 to move the Sanitary Line Construction off of Laurel Run Road.

The Authority acknowledges the fact that the lateral crossings must be cut across the concrete roadway. The Authority will pay for lateral saw cutting at a rate of $3.32/LF of saw cutting. This rate is established by use of the previous cutting of 2400 LF at $7,957.00. All revised manhole locations have been marked with one (1) manhole added manhole, with a rim elevation of 1592.60and an invert in of 1581.25 and an invert out of 1581.05. All adjustments will be paid in accordance with unit cost prices. An SEA RPR will be in the area of relocation to document any added work, i.e. move mail boxes, head walls, etc., that would not have been required at the original line location. In addition, the sanitary line at Arc Road has been adjusted to eliminate extensive roadway saw cutting and restoration in that area. The revised manhole locations have also been marked in the area of Arc Road. SEA will have a representative present to address any additional items requiring movements due to the relocation of the line. All additional work required, that is not established in unit cost bid items, must be verified by and agreed to on a daily basis by CCI and the SEA RPR.

A summary of additional material and labor must be signed off every day, by each party. We have attached a marked up plan of manhole relocations for your use. A copy of this letter and the marked plan has been hand delivered to your field personnel.

At the completion of the relocation, we will summarize any additional costs associated with the relocation, and recommend a Change Order, based on daily agreed upon labor and materials. We are hopeful that we have addressed all issues, and believe this will expedite the project schedule.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

TAG:rmm

Attachments

Cc: WBMA
U.S. Army Corps of Engineers, Pablo Colon-Garay
DEP, Bill Malinich
Mr. George Test
File 3334-2; Contract 2000-01

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SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

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Fax: (570) 882-8299

February 13, 2001

Continental Construction, Inc.
P.O. Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01; Sanitary Sewer Construction Project

Dear Ms. Marzella:

We have recently received a phone call from the WBMA regarding several verbal complaints associated with the conditions of the roadways, driveways, and access to resident homes throughout the project area. These areas are:

- In the area of MH A-48 through A-51 at Baughman Street
- Bigler Street Crossing
- I Line – Grass Areas
- H Line – Crossings and driveways
- Alley between A Line and O Line
- Harbison Street
- Two Crossings on Arch Road
- 1 Driveway on Y Line
- Railroad Street
- All SR 2024 Crossings
- Top Section of Sportmans Road

Due to the forecasted rain for the next few days, we believe these areas will continue to deteriorate. In accordance with Section 01010, 1.09.B these crossings shall be maintained properly to eliminate rough sunken, raised, or otherwise unsafe conditions by the Contractor. In addition, the deteriorated roadways, driveways, etc., have become a public nuisance. In

EXHIBIT "E"

accordance with Section 01010, 1.09.E, should a public nuisance be created by the Contractor in the opinion of the Owner, then upon written notice the Owner may request the appropriate Authority having jurisdiction where the nuisance occurs to correct the damage and the cost of the work shall be deducted from any amounts otherwise due or to become due the Contractor.

CCI's immediate action is required to repair or replace any deteriorated driveways, walkways, roadways or accesses that may exist on the project.

Consider this written notification of a public nuisance due to the deteriorated areas. Should CCI choose not to take immediate action to repair or replace these deteriorated areas all areas will be repaired or replaced, and all associated costs will be deducted from CCI's next payment.

Please coordinate all exact locations and revisions with our on-site RPR, Mr. Ron Senior, and proceed immediately with the appropriate action required to eliminate this issue.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

Cc: WBMA
US Army Corps of Engineers, Pablo Colon-Garay
DEP, Bill Malinich
George S. Test, Esquire
SEA Field Office
File 3334-2; Contract 2000-01

T

WALLACETON-BOGGS MUNICIPAL AUTHORITY
P.O. BOX97
WEST DECATUR, PA 16878

16 November 2000

Sweetland Engineering & Associates, Inc.
600 Science Park Road
State College PA 16803

ATTEN: Tracy Gardner

Subject: Contract 2000-01
Collection & Conveyance System

Dear Mr. Gardner:

Reference your letter dated 8 November 2000 to Continental Construction Inc. regarding the additional wye fittings allegedly installed under the above subject contract.

The Authority is unaware of any directive which permitted the installation of any additional fittings on this project.

It is our understanding that Continental has requested a change order for the additional 6" x 4" wyes which they state that they were directed to install. Continental has requested an increase in the contract price of $80.00 per wye and a 30-minute extension of time per wye.

The Authority obtained pricing from a local pipe supplier for a 6" x 4" wye. That price per wye was $14.00. It is incomprehensible to Authority members that adding 30 minutes labor to the cost of a $14.00 wye would result in an installed price of $80.00 per wye.

It is the Authority's position that they did not direct the installation of the wyes and are not interested in having the contractor install the wyes. At some later date, the Authority may decide to purchase wyes for the sanitary sewer laterals and provide them free-of-charge to the system users when they begin to connect to the system.

Sincerely,

Christopher P. Bungo

Christopher P. Bungo, Secretary/Treasurer

xc: Project File wbma/cor
George Test, Esquire

EXHIBIT "F"

20109

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SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

E-mail: admin@sweetland-eng.com

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Sayre, PA 18840
(570) 882-9777
Fax: (570) 882-8299

October 4, 2000

Continental Construction
PO Box 126
Johnsonburg Road
Ridgway, PA 15853

Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
Contract 2000-01, Sanitary Sewer Construction Project

Dear Ms. Marzella:

Upon review of your letter dated, September 29, 2000, concerning our phone conversation on September 15, 2000, I have the following clarifications that I would like to note.

I did not state that Continental Construction, Inc., could have obtained information from the Wallaceton-Boggs Municipal Authority (WBMA) or the community about subsurface conditions. I believe I stated that you may have obtained information from the above mentioned parties. I also did not state that the above referenced parties were aware of subsurface structures. I stated that there might have been many people in the area that knew of a brick yard in the areas. In addition, I did not state that it was common knowledge that items were buried underground, only that the brick yard was common knowledge.

Additionally, I did not reference illegally buried structures, your question was "did we know that items were buried illegally in the area." I stated that at the time items were buried, it may not have been illegal.

You continue to reference buried structures in your letter, but I do not recall discussions directly addressing prior knowledge of buried structures. The WBMA or SEA did not have any prior knowledge of underground structures or conditions other than what was reported in core boring reports supplied with the Contract Documents. In accordance with the Contract Documents, all excavation is unclassified.

EXHIBIT "G"

The Contract Documents give the Contractor permission to perform exploratory excavation prior to bidding, this option was not taken by Continental Construction.

In an effort to eliminate any further misinterpretation at verbal communication, we are requesting all correspondence in writing.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner
Construction Services Manager

TAG:rmm

Attachment

Cc: George S. Test, Esquire
WBMA
File 3334-2; Contract 2000-01

CONTINENTAL CONSTRUCTION, INC.

PO BOX 126
RIDGWAY, PA 15853
PHONE: 814-776-6126 FAX: 814-776-6121
EMAIL: julee@penn.com

RECEIVED
OCT 03 2000
SWEETLAND ENGINEERING AND ASSOCIATES

September 29, 2000

Mr. Tracy A. Gardner
Sweetland Engineering & Associates, Inc.
600 Science Park Road
State College, PA 16803

Re: Contract 2000-01, Sanitary Sewer Project
Wallaceton-Boggs Municipal Authority

Dear Mr. Gardner:

On September 15, 2000 at approximately 9:40 AM, you and I had a telephone conversation during which we discussed your letter dated September 14, 2000 concerning unclassified excavation in the areas between manholes AE-2 through A-3 and A-3 through A-5.

During our conversation, you stated that at the time of bid, we should have assumed that we would be encountering brick and concrete structures during excavation in these areas since there were bricks present on the ground surface before the project bid. I disagreed and asked how we could have possibly known about the sand and ash pits that we encountered in the trench. You stated that we could have obtained that information from a WMBA member or anyone who lives in this area since some members of the WBMA and the community knew of the existence of these subsurface structures. You even said it was common knowledge in the area that a brickyard existed on this site and that these items were buried underground. I responded that we would not assume that someone illegally buried structures such as those encountered just because there were a few bricks lying on the ground. You said that it might not have been illegal to bury these structures years ago, at the time when they were actually buried. Nonetheless, you still contended since you and some Authority members had knowledge of these buried structures that we had access to this information and failed to ask.

The WBMA and SEA were well aware of these hidden underground conditions and structures prior to the bid date and failed to disclose this information to the bidders. Despite the fact that the WBMA/SEA had knowledge of these items, they failed to put this information in the bidding documents.

We have completed the sewerline work in this area per your direction. We have documented all extra time and expense associated with removing this material. An invoice for these additional costs and extra time will be forthcoming. The above is supplementing information to our letter of September 18, 2000 regarding this issue.

Sincerely,
Continental Construction, Inc.

Julee M. Marzella, Sec/Treas.

Cc: Mr. Kevin McKeon, Fluke, Weiers & Schmitt, P.C.

#20110

SWEETLAND
ENGINEERING
& ASSOCIATES, INC.

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October 5, 2000

Continental Construction
PO Box 126; Johnsonburg Road
Ridgway, PA 15853
Attention: Ms. Julee Marzella

RE: **Wallaceton-Boggs Municipal Authority**
2B Stone

Dear Ms. Marzella:

In response to Continental Construction, Inc. Letter dated October 4, 2000, attached for your reference, concerning HRI, Inc. – Eastern Region's use of 2B stone for pipe bedding, we have the following response.

HRI, Inc.'s use of 2B Stone as pipe bedding was accepted by the WBMA with two conditions. The first condition is that the Contractor issue a credit to the WBMA for the substitution of 2B stone for the specified 2A.

The second condition is that the contractor install a subsurface drain from the low point in the trench to daylight, to allow discharge of any water that my collect in the 2B Stone. The Contractor agreed to both conditions noted and proceed with pipe installation. We believe the above referenced conditions were offered to Continental Construction for the use of 2B pipe bedding for Contract 2000-01 and were not acceptable to Continental Construction, Inc.

We hope that this letter will clarify any concerns you may have associated with the piping installation on Contract 2000-02.

Sincerely,

Sweetland Engineering & Associates, Inc.

Tracy A. Gardner, EMM

Tracy A. Gardner
Construction Services Manager

Attachment

Cc: WBMA
George S. Test, Esquire
U.S. Army Corps of Engineers
File 3334-2; Contract 2000-01

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EXHIBIT "H"

WALLACETON-BOGGS
DEFECTIVE MANHOLES/UNKNOWN COSTS LIST

Four manholes are still defective on the project: MH AE-19, MH O-1, MH K-1, and MH A-68.

Cost Breakdown using T/C and Invert numbers supplied by CCI on the project as-built drawings.

4 MH @ $1100.00 each	cost	$4400.00
7.13 VF @ $60.00 VF	cost	$ 427.80
	Total cost	$4827.80

UNKNOWN COST LIST:

1.	Areas cleared outside of the established easements.	Cost:?
2.	Sewer lines installed at less than designed slopes.	Cost:?
3.	Sewer lines installed out of established easement areas.	Cost:?
4.	Repairs for unknown property damage.	Cost:?

EXHIBIT "I"

FINAL COMPLAINT COST FOR WBMA

NOTE: THE NUMBERS THAT ARE LISTED BEFORE EACH ITEM CORRESPOND TO THE RESPONSE NUMBER OF INDIVIDUAL COMPLAINTS CURRENTLY NOT ADDRESSED.

PLANTINGS

COMPLAINT RESPONSE NUMBER		
4.	(2) JUNIPERS	$50.00
12.	(2) ROSE OF SHARON	$80.00
16.	(40 LF) PRIVET HEDGE 4-5' HIGH	$830.00
17.	(6) JUNIPERS, MULCH, "Something Wisteria"	$500.00
15.	(3) BLUE SPRUCE PINE TREES 4-5' HIGH	$200.00
19.	(1) JAPANESE MAPLE 4-5' HIGH	$150.00
19.	(1) RED AZALEA 2' HIGH	$25.00

3., 12., 15., 17., 18., 19., & A-12 TO A-26, K-2 TO K-3, CARAM PROPERTY (A-48 TO G-1) 4" TOPSOIL AND SEEDING

1627SY @ $2.40 SY $3904.80

PIPING

1.	EXTEND LATERAL APPROX. 40 LF @ 18.00 LF	$720.00
5.	REIMBURSE HOMEOWNER FOR REPAIRS COMPLETED	$223.56
15.	REPLACE (2) 20' SECTION OF 12" CMP	$500.00
15.	REPAIR WATER WELL DRAINAGE LINE	$200.00
15.	REPAIR BASEMENT DRAIN	$100.00

EARTH WORK

1.	RECONSTRUCT DITCH LINE TO CORRECT DEPTH AND PATH	$500.00

ROADWAY REPAIRS

8.	REGRADE DIRT ROAD	$300.00
9.	REPAIR SETTLED DRIVEWAY PAVEMENT	$650.00
4., 6.,	DRIVEWAY REPAIRS	$500.00

SURVEY

COMPLAINT RESPONSE NUMBER		
7., 8., 11., 13., 14.	RESET PROPERTY PINS	$2500.00

VEHICLE DAMAGES

5.	BROKEN WINDSHIELD	$145.00
10.	TRUCK TIRE AND ALIGNMENT	$150.00

DEBRIS REMOVAL/CLEANUP

2., 8., 19.,		$2500.00

MISCELLANEOUS ITEMS

15.	FENCE REPAIR	$150.00
15.	MAILBOX REPAIR	$45.00
	RESET FENCE AT CARAM PROPERTY	$150.00
	SUPPLY 30 TON 2B AND 6-8 TON 2RC TO WALLACETON BOROUGH.	$500.00
19.	REPAIRS TO GRAPE ARBOR	$100.00

ESTIMATED TOTAL COST FOR COMPLAINT REPAIRS

$15673.36

COMMONWEALTH OF PENNSYLVANIA)

ss.

COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared RICHARD SHIMMEL, Chairman of the Wallaceton-Boggs Municipal Authority, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer to Complaint and Counterclaim are true and correct to the best of his knowledge, information and belief.

Richard Shimmel

SWORN and SUBSCRIBED before me this 8th day of October, 2001.

Notarial Seal
Linda C. Lewis, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires July 25, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUANTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	*	
v.	*	No. 01-1265-CD
WALLACETCN-BOGGS MUNICIPAL AUTHCRITY, Defendant.	*	

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Defendant's Answer to Complaint and Counterclaim filed in the above-captioned action was served on the following person and in the following manner on the 9th day of October, 2001:

First-Class Mail, Postage Prepaid

Kevin J. McKeon, Esquire
Fluke, Weiers & Schmitt, P.C.
1400 The Bank Tower
Pittsburgh, PA 15222

James A. Naddeo
Attorney for Defendant

Exhibit C

SWEETLAND
ENGINEERING
&
ASSOCIATES, INC.

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of NOVEMBER 12, 1998 between **WALLACETON-BOGGS MUNICIPAL AUTHORITY, P. O. Box 97, West Decatur, PA, 16878** ("OWNER") and **SWEETLAND ENGINEERING & ASSOCIATES, INC., 600 Science Park Road, State College, PA 16803** (ENGINEER").

OWNER intends to **Install Wastewater Collection, Conveyance and Treatment Facilities serving Wallaceton Borough and portions of Boggs Township, Wallaceton Borough and Boggs Township, Clearfield County, Pennsylvania** (the "Project").

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance or furnishing of professional engineering services by ENGINEER with respect to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the first phase of the Basic Services described in Section 2 below and as further set forth in Exhibit A, "Further Description of Basic Engineering Services and Related Matters" ("Exhibit A") and in the other exhibits listed in Section 9 below. This Agreement will become effective on the date first above written.

Exhibit "C" to Joinder Complaint

SECTION 1 -- GENERAL

1.1. Standard of Care.

ENGINEER shall perform for or furnish to OWNER professional engineering and related services in all phases of the Project to which this Agreement applies as hereinafter provided. ENGINEER shall serve as OWNER's prime design professional and engineering representative for the Project providing professional engineering consultation and advice with respect thereto. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

1.2. Coordination with Other Documents.

It is the intention of the parties that the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "*defective*" will be used in this Agreement as defined in the Standard General Conditions.

1.3. Definitions

Wherever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.3.1. *Additional Services.* Additional Services means the services to be performed for or furnished to OWNER by ENGINEER described in Section 3 of this Agreement.

1.3.2. *Agreement.* Agreement means this Standard Form of Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Section 9 of this Agreement.

1.3.3. *Basic Services.* Basic Services means the services to be performed for or furnished to OWNER by ENGINEER described in Section 2 of this Agreement.

1.3.4. *Construction Cost.* Construction Cost means the total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Section 4 of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

1.3.5. *Contractor.* Contractor means the person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.

1.3.6. *ENGINEER's Consultant.* ENGINEER's Consultant means a person or entity having a contract with ENGINEER to perform or furnish Basic or Additional Services as ENGINEER's independent professional associate or consultant engaged directly on the Project.

1.3.7. *Reimbursable Expenses.* Reimbursable Expenses means the expenses incurred directly in connection with the performance or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit B, "Payments to Engineer for Services and Reimbursable Expenses" ("Exhibit B").

1.3.8. *Resident Project Representative.* Resident Project Representative means the authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit C, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit C").

1.3.9. *Standard General Conditions.* Standard General

Conditions means the Standard General Conditions of the Construction Contract (No. 1910-8) (1990 Edition) of the Engineers Joint Contract Documents Committee.

1.3.10. *Total Project Costs.* Total Project Services means the sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under paragraphs 4.4, 4.5 and 4.7 through 4.14, inclusive.

1.3.11. *Report.* Act 537 Sewage Facilities Plan approved by the Jay Township Supervisors and OWNER.

SECTION 2--BASIC SERVICES OF ENGINEER

2.1 Study and Report Phase.

This section deleted.

2.2. Preliminary Design Phase.

After acceptance by OWNER of the Report, selection by OWNER of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

2.2.1 On the basis of the Report, the recommended solution selected by OWNER and the specific modifications or changes in the scope, extent, character or design requirements of the Project agreed upon by OWNER and ENGINEER, prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.

2.2.2. Advise OWNER if additional reports, data or other information or services of the types described in paragraph 4.4 are necessary and assist OWNER in obtaining such reports, data or other information and services.

2.2.3. Based on the information contained in the Preliminary Design documents, submit an opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, which will be itemized.

2.2.4. Furnish the Preliminary Design documents to and review them with OWNER.

2.2.5. Submit the Preliminary Design documents and revised opinion of probable Construction Cost within the stipulated period indicated in Exhibit A.

2.2.6. ENGINEER's services under the Preliminary Design Phase will be considered complete at the earlier of (1) the date when the Preliminary Design documents have been accepted by OWNER or (2) thirty days after the date when such Preliminary Design documents are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval is to be obtained during the Preliminary Design Phase.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase as set forth in this paragraph 2.2 are amended and supplemented as indicated in Exhibit A.

2.3. Final Design Phase.

After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Construction Cost and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:

2.3.1. On the basis of the accepted Preliminary Design documents, the modifications or changes in the scope, extent, character or design requirements of the Project agreed upon by OWNER and ENGINEER and the revised opinion of probable Construction Cost, prepare for incorporation in the Contract Documents final Drawings showing the scope, extent and character of the work to be performed and furnished by Contractor and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute).

2.3.2. Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.

2.3.3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, itemized as provided in paragraph

2.1.5. as a result of changes in scope, extent or character or design requirements of the Project.

2.3.4. Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which will be generally consistent in form and substance with the forms and pertinent guide sheets prepared by the Engineers Joint Contract Documents Committee), and assist in the preparation of other related documents.

2.3.5. Furnish the above documents, Drawings and Specifications to and review them with OWNER.

2.3.6. Submit the above documents, Drawings and Specifications and a revised opinion of probable Construction Cost within the stipulated period indicated in Exhibit A.

2.3.7. ENGINEER's services under the Final Design Phase will be considered complete at the earlier of (1) the date when the submittals have been accepted by OWNER or (2) thirty days after the date when such submittals are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, if such approval is to be obtained during the Final Design Phase.

The duties and responsibilities of ENGINEER during the Final Design Phase as set forth in this paragraph 2.3 are amended and supplemented as indicated in Exhibit A.

2.4 Bidding Phase.

After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Final Design Phase documentation (including the most recent opinion of probable Construction Cost), and upon written authorization to proceed, ENGINEER shall:

2.4.1. Assist OWNER in advertising for and obtaining bids for the contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process deposits for Bidding Documents.

2.4.2. Issue Addenda as appropriate to clarify, correct or change the Bidding Documents.

2.4.3. Consult with OWNER as to the acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.

2.4.4. Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

2.4.5. The Bidding Phase will terminate and the services to be performed or furnished thereunder will be considered complete upon commencement of the Construction Phase.

The duties and responsibilities of ENGINEER during the Bidding Phase as set forth in this paragraph 2.4 are amended and supplemented as indicated in Exhibit A.

2.5. Construction Phase.

During the Construction Phase:

2.5.1. *General Administration of Construction Contract.* ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided in Exhibit A and except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

2.5.2. *Visits to Site and Observation of Construction.* In connection with observations of the work of Contractor while it is in progress:

2.5.2.1. ENGINEER shall make visits to the site at intervals appropriate to the various stages of Construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Resident Project Representative at the site to assist ENGINEER and to provide more continuous observations of such work. The furnishing of such Resident Project Representative

services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph 2.5. Such visits and observations by ENGINEER and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph 2.5.2.2 and other express or general limitations in this Agreement and elsewhere.

2.5.2.2. The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over the responsibility for the means, methods, techniques, sequences or procedures of Construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

2.5.3. *Defective Work.* During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

2.5.4. *Clarifications and Interpretations; Field Orders.* ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

2.5.5. *Change Orders and Work Change Directives.* ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.

2.5.6. *Shop Drawings.* ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of Construction or other safety precautions and programs incident thereto.

2.5.7. *Substitutes.* ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph 3.2.2.

2.5.8. *Inspections and Tests.* ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate

compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

2.5.9. *Disagreements between OWNER and Contractor.* ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

2.5.10. *Applications for Payment.* Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

2.5.10.1. ENGINEER shall determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph 2.5.10.1 are expressly subject to the limitations set forth in paragraph 2.5.10.2 and other express or general limitations in this Agreement and elsewhere.

2.5.10.2. By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

2.5.11. *Contractor's Completion Documents.* ENGINEER shall receive, review and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph 2.5.6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

2.5.12. *Substantial Completion.* Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially

complete. ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

2.5.13. *Final Notice of Acceptability of the Work.* ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice in the form attached hereto as Exhibit D (the "Notice of Acceptability of Work") that the work is acceptable (subject to the provisions of paragraph 2.5.10.2) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

2.5.14. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

2.5.15. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment. If the Project involves more than one prime contract as indicated in paragraph 5.5, Construction Phase services may be rendered at different times in respect of separate prime contracts.

The duties and responsibilities of ENGINEER during the Construction Phase as set forth in this paragraph 2.5 are amended and supplemented as indicated in Exhibit A.

2.6 Operational Phase.

During the Operational Phase, ENGINEER shall, when requested by OWNER:

2.6.1. Provide assistance in connection with the refining and adjusting of any equipment or system.

2.6.2. Assist OWNER in training OWNER's staff to operate and maintain the Project.

2.6.3. Assist OWNER in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.

2.6.4. Prepare a set of reproducible record drawings showing record information which ENGINEER considers significant based on the Drawing, Shop Drawings, and other record documents furnished by Contractor to ENGINEER which were annotated by Contractor to show all changes made during construction. ENGINEER will not be responsible for any errors in or omissions in the information provided by Contractor that is incorporated in the record drawings or other record documents.

2.6.5. In company with OWNER, visit the Project to observe any apparent defects in the completed work, assist OWNER in consultations and discussions with Contractor concerning correction of such defects, and make recommendations as to replacement or correction of defective work.

2.6.6. The Operational Phase may commence during the Construction Phase and will terminate 120 days after the date of Substantial Completion.

The duties and responsibilities of ENGINEER during the Operational Phase as set forth in this paragraph 2.6 are amended and supplemented as indicated in Exhibit A.

SECTION 3 -- ADDITIONAL SERVICES OF ENGINEER

3.1. Additional Services Requiring Authorization in Advance.

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 3.1.1 through 3.1.19, inclusive, as amended and supplemented as indicated in Exhibit A. These services will be paid for by OWNER as indicated in Section 6.

3.1.1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project.

3.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

3.1.3. Services resulting from evaluation by ENGINEER during the Study and Report Phase at OWNER's request of

alternative solutions in addition to those specified in Exhibit A.

3.1.4. Services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports, Drawings, Specifications, or Contract Documents, or are due to any other causes beyond ENGINEER's control.

3.1.5. Services resulting from facts revealed about conditions:

3.1.5.1. which are different from information about such conditions that OWNER previously provided to ENGINEER under paragraph 4.4 and upon which ENGINEER was entitled to rely; or

3.1.5.2. as to which OWNER had responsibility to provide information under paragraph 4.4 if such information was not previously provided.

3.1.6. Providing renderings or models for OWNER's use.

3.1.7. Preparing documents for alternate bids requested by OWNER for Contractor's work which is not executed or documents for out-of-sequence work.

3.1.8. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

3.1.9. Furnishing services of ENGINEER's Consultants for other than Basic Services; and furnishing data or services of the types described in paragraph 4.4 when OWNER employs ENGINEER to provide such data or services in lieu of furnishing the same under paragraph 4.4.

3.1.10. Services attributable to a variation in the number of prime contracts from the number specified in Exhibit A for work designed or specified by ENGINEER.

3.1.11. Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 2.

3.1.12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering and Constructability Review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications or Contract Documents as a result of such review processes.

3.1.13. Determining the acceptability of substitute materials and equipment proposed during the Bidding Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.

3.1.14. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.

3.1.15. Providing field surveys for design purposes, engineering surveys and staking to enable Contractor to proceed with its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

3.1.16. Preparation of operating, maintenance and staffing manuals to supplement Basic Services under paragraph 2.6.3.

3.1.17. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services under paragraphs 2.1.3 and 2.3.2).

3.1.18. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 4.12.

3.1.19. Other additional services performed or furnished by ENGINEER in connection with the Project, including services which are to be furnished by OWNER under Section 4, and services not otherwise provided for in this Agreement.

3.2. Required Additional Services.

When required by the Contract Documents in connection with the performance or furnishing of ENGINEER's services during the Construction Phase, ENGINEER shall perform or furnish, without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 3.2.1 through 3.2.6, inclusive. These services are not included as part of Basic Services except to the extent provided in Exhibit A. Required Additional Services will be paid for by OWNER as indicated in Section 6. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.

3.2.1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER, if because of the method of compensation agreed upon by OWNER and ENGINEER, the resulting change in compensation for Basic Services is not commensurate with the extent of the additional services rendered.

3.2.2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution which is inappropriate for the Project or an excessive number of substitutions.

3.2.3. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of materials, equipment or energy shortages.

3.2.4. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of *defective*, neglected or delayed work of Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by Contractor.

3.2.5. Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the Project by OWNER prior to its Substantial Completion.

3.2.6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the work.

SECTION 4 -- OWNER'S RESPONSIBILITIES

Except as otherwise provided in Exhibit A, OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto:

4.1. Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

4.2. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

4.3. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

4.4 Furnish to ENGINEER, as requested by ENGINEER for performance of Basic Services or as required by the Contract Documents, the following:

4.4.1. data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;

4.4.2. the services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment prior to and after installation, or to evaluate the performance of materials, equipment and facilities of OWNER, prior to specification, and during construction;

4.4.3. appropriate professional interpretations of all of the foregoing;

4.4.4. environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;

4.4.5. field surveys for design purposes and property, boundary, easement, right-of-way, topographic and utility surveys or data including relevant reference points;

4.4.6. property descriptions;

4.4.7. zoning, deed and other land use restrictions; and

4.4.8. other special data or consultations not covered in Section 2.

OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data and information in performing or furnishing services under this Agreement.

4.5. Provide, as required by the Contract Documents, engineering surveys and staking to enable Contractor to proceed with the layout of the work, and other special field surveys.

4.6. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

4.7. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.

4.8. Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.

4.9. Provide, as may be required for the Project:

4.9.1. accounting, bond and financial advisory, independent cost estimating and insurance counseling services;

4.9.2. such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and

4.9.3. such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.

4.10. Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:

4.10.1. that Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work; or

4.10.2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in 4.10.1 and 4.10.2 above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

4.11. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering and Constructability Review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site, OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.

4.12. Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.

4.13. If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.

4.14. Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 4.4, 4.5 and 4.7 through 4.14, inclusive) and other costs of the types referred to in paragraph 2.1.5 so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

4.15. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and Substantial Completion and final payment inspections.

4.16. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

4.17. Furnish, or direct ENGINEER to provide, Additional Services as stipulated in paragraph 3.1 of this Agreement or other services as required.

SECTION 5 -- TIMES FOR RENDERING SERVICE

5.1. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of construction contracts, construction and initial operation of the Project including extra work and required extensions thereto.

5.2. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

5.3. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within the stipulated period identified in this Agreement after completion of the Final Design Phase or does not proceed in an orderly and continuous progression, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

5.4. If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER:

5.4.1. for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised; or

5.4.2. for more than one year through no fault of ENGINEER, or if ENGINEER for any reason is required to render Construction Phase services more than one year after Substantial Completion is achieved, the rates and amounts of compensation provided for elsewhere in this Agreement will be subject to equitable adjustment to reflect, among other things, changes in the various elements that comprise such rates of compensation.

5.5. In the event that the work designed or specified by ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating and Construction Phases in order to sequence and coordinate

properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in Exhibit A whether or not the work under such contracts is to proceed concurrently.

SECTION 6 -- PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

6.1 Methods of payment for Services and Expenses of ENGINEER.

6.1.1. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Section 2 on the basis set forth in Exhibit B.

6.1.2. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Section 3 on the basis set forth in Exhibit B.

6.1.3. *For Reimbursable Expenses.*

This section deleted.

6.2. Other Provisions Concerning Payments.

6.2.1. *Preparation of Invoices.* Invoices for Basic and Additional Services and Reimbursable Expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. The amount billed for Basic Services and Additional Services in each invoice will be calculated on the basis set forth in Exhibit B. Invoices are due and payable on receipt.

6.2.2. *Unpaid Invoices.* If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

6.2.3. *Payments Upon Termination.*

6.2.3.1. *Termination by OWNER for Cause* In the event of termination by OWNER for cause under paragraph 8.1.1:

6.2.3.1.1. Upon the completion of any phase of Basic Services, Progress payments due ENGINEER in accordance with this Agreement for all such services performed or furnished by ENGINEER and ENGINEER's Consultants through the completion of such phase will constitute total payment for such services. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

6.2.3.1.2. During any phase of the Basic Services, ENGINEER also will be paid for such services performed or furnished in accordance with this Agreement by ENGINEER during that phase through the date of termination on the basis specified in Exhibit B. ENGINEER also will be paid for the charges of ENGINEER's Consultants employed to perform or furnish Basic Services to the extent such services have been performed or furnished in accordance with this Agreement through the effective date of the termination. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

6.2.3.2. *Termination by OWNER for Convenience.* In the event of termination by OWNER under paragraph 8.1.2:

6.2.3.2.1. Upon the completion of any phase of Basic Services, progress payments due ENGINEER in accordance with this Agreement for all such services performed or furnished by ENGINEER and ENGINEER's Consultants through the completion of such phase will constitute total payment for such services. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, and for termination expenses under subparagraph 6.2.3.2.3 below.

6.2.3.2.2. During any phase of Basic Services, ENGINEER also will be paid for such services performed or furnished by

ENGINEER during that phase through the date of termination on the basis specified in Exhibit B. In addition, ENGINEER will be paid for the charges of ENGINEER's Consultants employed to perform or furnish Basic Services through the effective date of the termination. ENGINEER also will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, and for termination expenses under subparagraph 6.2.3.2.3 below.

6.2.3.2.3. In the event of termination by OWNER for convenience during or at completion of any phase of Basic Services, OWNER shall pay ENGINEER's reasonable expenses directly attributable to termination in accordance with rates applicable to the various categories of Additional Services measured from the date of termination, including other fair and reasonable sums for overhead and profit, and costs of terminating contracts with ENGINEER's Consultants.

6.2.3.3. *Termination by ENGINEER for Cause.* In the event of termination by ENGINEER for cause under paragraph 8.1.1, ENGINEER shall be entitled to receive compensation calculated as set forth in paragraph 6.2.3.2.

6.2.4. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

SECTION 7 -- OPINIONS OF COST

7.1. Opinions of Probable Construction Cost.

ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in paragraph 4.9.1.

7.2. Designing to Construction Cost Limit.

If a Construction Cost limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit E, "Construction Cost Limit", to this Agreement.

7.3 Opinions of Total Project Costs.

ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs provided for in Section 2.

SECTION 8 -- GENERAL CONSIDERATIONS

8.1. Termination.

The obligation to provide further services under this Agreement may be terminated:

8.1.1. *For cause,*

8.1.1.1. by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty days of receipt thereof; *provided, however,* that if and to the extent such substantial failure cannot be reasonably cured within such thirty-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided from herein shall extend up to, but in no case more than, sixty days after the date of receipt of the notice.

8.1.2. by ENGINEER:

8.1.1.2. upon seven days' written notice if ENGINEER believe that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed design professional; or

8.1.1.2.2. upon seven days' written notice if the ENGINEER's services for design or during the construction of the Project are delayed or suspended for more than ninety days for reasons beyond ENGINEER's control.

8.1.1.2.3. In the case of termination under this paragraph 8.1.1.2, ENGINEER shall have no liability to OWNER on account of such termination.

8.1.2. *For convenience*, by OWNER effective upon the receipt of notice by ENGINEER.

8.2. Reuse of Documents.

All documents including Drawings and Specifications provided or furnished by ENGINEER (or ENGINEER's Consultants) pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER and ENGINEER's Consultants, as appropriate, shall retain an ownership and property interest therein (including the right of reuse by and at the discretion of ENGINEER and ENGINEER's Consultants, as appropriate) whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse without written verification or adaptation by ENGINEER and ENGINEER's Consultants, as appropriate, for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's Consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

8.3. Insurance.

8.3.1. ENGINEER shall procure and maintain insurance as set forth in Exhibit F, "Insurance", for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

8.3.2. OWNER shall list ENGINEER and ENGINEER's Consultants as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents as additional insureds with respect to such liability, property and other insurance purchased and maintained by Contractor. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured or additional insureds thereunder.

8.3.3 At any time OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, different limits or revised deductibles in excess of those specified in Exhibit F. If so requested by OWNER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits or revised deductibles, for such periods of time as requested by OWNER, at OWNER's sole expense, and Exhibit F will be supplemented to incorporate these requirements.

8.4. Controlling Law.

This Agreement is to be governed by the law of the principal place of business of ENGINEER.

8.5. Successors and Assigns.

8.5.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 8.5.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

8.5.2. Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due)

in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

8.5.3. Unless expressly provided otherwise in this Agreement:

8.5.3.1. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Contractor, Subcontractor, Supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in the benefits under this Agreement to anyone other than OWNER and ENGINEER.

8.5.3.2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph shall appear in the Contract Documents.

8.6. Dispute Resolution.

If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in Exhibit G, "Dispute Resolution." OWNER and ENGINEER agree to negotiate in good faith for a period of thirty days from the date of notice of all disputes between them prior to exercising their rights under Exhibit G or other provisions of this Agreement, or under law.

8.7. Allocation of Risks --Indemnification.

8.7.1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, employees and agents from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit H, "Allocation of Risks", if any.

8.7.2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees and agents and ENGINEER's Consultants from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, agents and OWNERS' consultants with respect to this Agreement or the Project.

8.7.3. In addition to the indemnity provided under paragraph 8.7.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and agents and ENGINEER's Consultants from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to the presence, discharge, release, or escape of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material at, on, under or from the Project site.

8.8. Notices.

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

8.9. Survival.

All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive the completion of all services of ENGINEER under this Agreement or the termination of this Agreement for any reason.

8.10. Severability.

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed

stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

SECTION 9 -- EXHIBITS AND SPECIAL PROVISIONS

9.1. This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

9.1.1. Exhibit A, "Further Description of Basic Engineering Services and Related Matters", consisting of three(3) pages.

9.1.2. Exhibit B, "Payments to Engineer for Services and Reimbursable Expenses", consisting of two (2) pages.

9.1.3. Exhibit C, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative", consisting of four (4) pages.

9.1.4. Exhibit D, "Notice of Acceptability of Work", consisting of two (2) pages.

9.1.5. Exhibit E, "Construction Cost Limit".

This section deleted.

9.1.6. Exhibit F, "Insurance", consisting of one (1) page. Engineer shall maintain coverages as shown in Exhibit F throughout the term of this Contract.

9.1.7. Exhibit G, "Dispute Resolution", consisting of two (2) pages.

9.1.8. Exhibit H, "Allocation of Risks".

This section deleted.

9.19. Exhibit I, "Special Provisions".

This section deleted.

9.2. This Agreement (consisting of pages 1 to 16, inclusive and the Exhibits identified above) constitutes the entire agreement between Owner and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

Wallaceton-Boggs Municipal Authority

By: Charles P Boggs

Title: Sec / Treas

Address for giving notices:

Wallaceton-Boggs Municipal Authority

P.O. Box 97

West Decatur, PA 16878

ENGINEER:

Sweetland Engineering & Associates, Inc.

By: David E Sweetland

Title: Pres.

Robert M Brown - WITNESS

Address for giving notices:

Sweetland Engineering & Associates, Inc.

600 Science Park Road

State College, PA 16803

This is **EXHIBIT A**, consisting of three pages, referred to in the **Agreement between OWNER and ENGINEER for Professional Services**, dated November 12, 1998.

Initial:
OWNER _____
ENGINEER _____

Further Description of Basic Engineering Services and Related Matters

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Sections 2, 3, 4 and 5 of the Agreement are amended and supplemented and the time periods for the performance of the Basic Services as indicated in Section 5 of the Agreement are established, all as indicated below:

SECTION A2-- BASIC SERVICES OF ENGINEER

A2.0. General.

The Basic Services are premised on the following general scope of professional services:

Provide Design, Bid Phase and Construction Phase services for wastewater collection and conveyance facilities serving the Borough of Wallaceton and portions of the Township of Boggs consisting of approximately 40,000 LF of 8-inch gravity sewer and a 0.090 MGD wastewater treatment facility. Basic services shall include necessary survey, preliminary design, regulatory agency coordination and permitting, final design, preparation of opinion of probable cost, preparation of bidding documents, coordination of bid phase services, construction administration and resident project representation.

A2.0.1. The following services listed in Section 3, "Additional Services", are hereby specifically deleted from that Section and will be performed or furnished by ENGINEER as part of Basic Services in the phase (s) identified below:

NONE

A2.0.2. The following services listed in Section 4, "OWNER's Responsibilities". Are hereby specifically deleted from that Section and will be performed or furnished by ENGINEER as part of Basic Services in the phase(s) identified below:

NONE

A2.0.3. Section 2, "Basic Services of ENGINEER", is hereby amended or supplemented to provide that the following services will be performed or furnished by ENGINEER as part of Basic Services in the phase(s) identified below:

A2.1. Study and Report Phase.

THIS SECTION DELETED.

A2.2. Preliminary Design Phase.

A2.2.0. During the Preliminary Design Phase ENGINEER shall: ***No amendments or Supplements to Paragraph 2.2..***

A2.2.5.1. Three (3) sets of ENGINEER's Preliminary Design documentation will be submitted.

A2.2.5.2. The preliminary design documentation will be submitted to OWNER within 150 calendar days following written authorization from OWNER to ENGINEER to proceed with the Preliminary Design Phase services.

A2.3. Final Design Phase.

A2.3.0. During the Final Design Phase ENGINEER shall: ***No amendments or supplements to paragraph 2.3.***

A2.3.6.1. Three (3) sets of Contract Documents will be submitted to OWNER.

A2.3.6.2. The Contract Documents will be submitted to OWNER within 60 calendar days following written authorization from OWNER to ENGINEER to proceed with the Final Design Phase Services.

A2.3.8. The number of prime contracts for work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is Three (3).

A2.4. Bidding Phase.

A2.4.0. During the Bidding Phase ENGINEER shall: ***No amendments or supplements to paragraph 2.4***

A2.5. Construction Phase.

A2.5.0. During the Construction Phase ENGINEER shall: ***No amendments or supplements to paragraph 2.5***

A2.5.15. The Construction Phase Services will commence within 150 calendar days following the completion of the Final Design Phase.

A2.6. **Operational Phase.**

A2.6.0. During the Operational Phase ENGINEER shall: ***No amendment or supplements to Paragraph 2.6***

SECTION A3 -- ADDITIONAL SERVICES OF ENGINEER

A3.0.1. The following services listed in Section 2, "Basic Services", are hereby specifically deleted from that Section and will be performed or furnished by ENGINEER as part of Additional Services under paragraph 3.1 or 3.2 as indicated:

NONE

A3.0.2. The following services listed in Section 4, "OWNER's Responsibilities", are hereby specifically deleted from that Section and will be performed or furnished by ENGINEER as part of Additional Services under paragraph 3.1 or 3.2 as indicated:

Sections 4.4.4 through 4.4.7, Section 4.5 and Section 4.8

A3.0.3. Section 3, "Additional Services of ENGINEER", is hereby amended or supplemented to provide that the following services will be performed or furnished by ENGINEER as part of Additional Services under paragraph 3.1. or 3.2 as indicated:

Sections 3.1.15 and 3.1.16 shall be performed by Engineer as required additional services in accordnace with Section 3.2.

SECTION A4 -- OWNER'S RESPONSIBILITIES

A4.0.1. The following services listed in Section 2, "Basic Services", are hereby specifically deleted from that Section and will be performed or furnished by OWNER as part of OWNER's Responsibilities under Section 4:

NONE

A4.0.2. The following services listed in Section 3, "Additional Services", are hereby specifically deleted from that Section and will be performed or furnished by OWNER as part of OWNER's Responsibilities under Section 4:

NONE

A4.0.3. Section 4, "OWNER's Responsibilities", is hereby amended or supplemented to provide that the following services or responsibilities will be performed or furnished by OWNER as part of OWNER's Responsibilities under Section 4:

NONE

A4.0.11. OWNER intends to employ each of the independent consultants listed below to perform or furnish services in regard to the Project for the respective scope of services listed below for each. Payments to ENGINEER for Services in Section 6 hereof are based on the participation in the Project of OWNER's independent consultants as described herein.

NONE

This is **Exhibit B**, consisting of two pages, referred to in the **Agreement between OWNER and ENGINEER for Professional Services**, dated November 12, 19 98.

Initial:
OWNER C F B
ENGINEER

Payments to ENGINEER for Services and Reimbursable Expenses

Section 6 of the Agreement is amended and supplemented to include the following agreement of the parties:

Lump Sum Method of Payment

SECTION B6 -- PAYMENTS TO ENGINEER

B6.1. Methods of Payment for Services and Expenses of ENGINEER.

B6.1.1. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services as follows:

B6.1.1.1. *General.* A lump sum fee of **$198,700.00** for all services of ENGINEER (except for services of ENGINEER's Resident Project Representative performed or furnished under paragraph 2.5.2.1 and operation Phase services performed or furnished under paragraph 2.6) including services of ENGINEER's Consultants.

B6.1.1.2. *Resident Project Representative Services.* For services of ENGINEER's Resident Project Representative performed or furnished under paragraph 2.5.2.1, a lump sum fee of **$102,900.00.** This fee reflects the services of one full-time Resident Project Representative for thirty-two weeks and one full time inspector for twenty-four weeks. Should the project require additional inspection staff, OWNER and ENGINEER shall negotiate additional fees.

B6.1.1.3. *Operational Phase Services.* For Operational Phase services performed or furnished under paragraph 2.6, a lump sum fee of **$4,500.00.**

B6.1.2. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services as follows:

B6.1.2.1. *General.* A lump sum fee of **$73,000.00** for all Additional Services pursuant to section 3.0 (except services as a consultant or witness under paragraph 3.1.17).

B6.1.2.2. *ENGINEER's Consultants.* For services of ENGINEER's Consultants performed or furnished pursuant to paragraph 3.1 or 3.2, the amount billed to ENGINEER therefor times a factor of 1.1.

B6.1.2.3. *Cost-Plus or Incentive Savings Construction Contracts.*

This Section deleted.

B6.1.2.4. *Several Prime Contracts.* If more than three (3) separate prime contracts are awarded for work designed or specified by ENGINEER for the Project, an additional lump sum fee of **$ 10,000.00** for each such additional prime contract for Basic Services under B6.1.1.1 and on the basis indicated in B6.1.1.2 and B6.1.1.3 except that the factors in B6.1.1.2 and B6.1.1.3 shall be:

B6.1.1.2 $10,000

B6.1.1.3 $ 1,500.

B6.1.2.5. *Serving as a Witness.* For services performed by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding under paragraph 2.1.17, at the rate of $800.00 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration or proceeding will be on the basis provided in paragraph B6.1.2.1).

B6.2. Other Provisions Concerning Payments.

B6.2.1. *Preparation of Invoices.* The portion of the amount billed for ENGINEER's services which is on account of the Lump Sum will be based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing. The portion related to services rendered on a Salary Costs basis will be billed based on the Salary Costs (multiplied by a factor, if any, as stated above) incurred at the time of billing.

B6.2.3. *Payments upon Termination.*

B6.2.3.4. In the event of termination during any phase of the Basic Services, ENGINEER will be paid for services performed or furnished in accordance with this Agreement during that phase on the basis of ENGINEER's Salary Costs times a factor of 3.0 for services performed or furnished during that phase to date of termination by ENGINEER's principals and employees engaged directly on the Project.

This is EXHIBIT C, consisting of Four pages, referred to In the Agreement between OWNER and ENGINEER for Professional Services, dated November 12 19 ____.

Initial:
OWNER: C P B
ENGINEER: [illegible]

Duties, Responsibilities and Limitations of Authority of Resident Project Representative

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Contractor, for safety precautions and programs incident to the work of Contractor, for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. *In particular, the specific limitations set forth in paragraph 2.5 of the Agreement are applicable.*

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.

2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

3. *Liaison:*
   a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.

   b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

4. *Shop Drawings and Samples:*

4. *Shop Drawings and Samples:*

   a. Record date of receipt of Shop Drawings and Samples.

   b. Receive Samples which are furnished at the site by Contractor, and notify ENGINEER of availability of Samples for examination.

   c. Advise ENGINEER and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.

5. *Review of Work, Rejection of Defective Work, Inspections and Tests:*

   a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.

   b. Report to ENGINEER whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

   c. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.

   d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.

6. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.

7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.

8. *Records:*

   a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Change Directives, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to Contractor and other Project related documents.

   b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.

   c. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.

9. *Reports:*

a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.

c. Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders.

d. Report immediately to ENGINEER and OWNER the occurrence of any accident.

10. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values. Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

12. *Completion:*

a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.

b. Observe whether Contractor has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.

c. Conduct a final inspection in the company of ENGINEER, OWNER and Contractor and prepare a final list of items to be completed or corrected.

d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. Limitations of Authority by RPR

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by ENGINEER.

2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.

3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.

4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.

6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.

7. Shall not authorize OWNER to occupy the Project in whole or in part.

8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

[*Note:* If the work designed or specified by ENGINEER is to be provided or performed under more than one prime contract or the times of performance are to be staggered, the provisions of this Exhibit should be amended or supplemented as required.]

This is **EXHIBIT D**, consisting of Two pages, referred to in the **Agreement between OWNER and ENGINEER for Professional Services**, dated November 12 1998

Initial:

OWNER CJL

ENGINEER

NOTICE OF ACCEPTABILITY OF WORK

PROJECT _____

OWNER _____

OWNER'S Contract No. _____

CONTRACTOR _____

CONSTRUCTION CONTRACT DATE _____

ENGINEER _____

To _____
OWNER

And To _____
CONTRACTOR

The undersigned hereby gives notice to the above OWNER and CONTRACTOR that the completed Work furnished and performed by CONTRACTOR under the above Contract is acceptable expressly subject to the provisions of the above Contract and the terms and conditions set forth on the reverse side hereof.

_____
ENGINEER

Dated:

_____, 19_____

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice on the front side of this paper is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the Engineering profession practicing under similar conditions at the same time and in the same locality.

2. Said Notice reflects and is an expression of the professional judgment of ENGINEER.

3. Said Notice is given as to the best of ENGINEER's knowledge, information and belief.

4. Said Notice is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of the Work) under ENGINEER's Agreement with OWNER and under the Contract referenced on the reverse hereof, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with OWNER and the Contract referenced on the reverse hereof.

5. Said Notice is not a guarantee or warranty of CONTRACTOR's performance under the above referenced Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

EXHIBIT 1

CNA
For All the Commitments You Make®

PROFESSIONAL LIABILITY
ARCHITECTS/ENGINEERS

INSURED: SWEETLAND ENGINEERING & ASSOCIATES
Policy PRE 11 403 82 98

MEMORANDUM OF INSURANCE
ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY

Addressee:

"SPECIMEN"

This memorandum is issued as a matter of information only and confers no rights upon the holder. By its issuance the Company does not alter, change, modify or extend the provisions of said policy and does not waive any of its rights thereunder.

Name and Address of Insured:

Sweetland Engineering & Associates
600 Science Park Road
State College, Pa. 16803

Policy Period: 7/17/98 to 7/17/01

$1,000,000	Per Claim limit of liability (including claims expenses)
$2,000,000	Aggregate limit of liability (including claims expenses)

The above policy has been issued by the Continental Casualty Company and is in force at the date indicated below:

Dated at: Chevy Chase, Md. Date: July 21, 1998

VICTOR O. SCHINNERER & CO.
BY:

Authorized Representative

1-41249-A

This is **EXHIBIT G**, consisting of Two pages, referred to in the Agreement between OWNER and ENGINEER for Professional Services, dated November 12, 1998.

Initial:
OWNER C' T' D
ENGINEER DAS

Dispute Resolution

Section 8 of the Agreement is amended and supplemented to include the following agreement of the parties:

G8.6. Dispute Resolution.

G8.6.1. OWNER and ENGINEER 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 this Agreement or the breach thereof ("disputes"), to mediation by a mutually agreed upon mediator prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs G8.6.2 through G8.6.8, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The requirement of paragraph G8.6.3 that demand for arbitration must be filed within a reasonable time shall be suspended with respect to a dispute submitted to mediation within that same applicable time limit and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

G8.6.2 All disputes between OWNER and ENGINEER not resolved under paragraph G8.6.1 will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in paragraphs G8.6.4 and G8.6.5 below. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provide in this paragraph G8.6 will be specifically enforceable under the prevailing law of any court having jurisdiction.

G.8.6.3. Notice of the demand for arbitration must be filed in writing with the other party to the agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration 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.

G8.6.4. Except as provided in paragraph G8.6.5 below, no arbitration arising out of or relating to this Agreement will include by consolidation, joinder or in any other manner any other person or entity who is not a party to this Agreement unless each of the following is met:

G8.6.4.1. 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;

G8.6.4.2. 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

G8.6.4.3. the written consent of the other person or entity sought to be included and of OWNER and ENGINEER has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but such consent shall not 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.

G8.6.5. Notwithstanding paragraph G8.6.4, if a claim, dispute or other matter in question between OWNER and ENGINEER involves the work of a Contractor, Subcontractor, OWNER's consultant or ENGINEER's Consultant (each, a "Joinable Party"), either OWNER or ENGINEER may join such Joinable Party as a party to the arbitration between OWNER and ENGINEER hereunder, and ENGINEER or OWNER, as appropriate, shall include in each contract with each such Joinable Party a specific provision whereby such Joinable Party consents to being joined in an arbitration between OWNER and ENGINEER involving the work or such Joinable Party. Nothing in this paragraph G8.6.5 nor in the provision of such contract consenting to joinder shall create any claim, right or cause of action in favor of the Joinable Party and against OWNER or ENGINEER that does not otherwise exist.

G8.6.6. All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than $200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount in controversy of any such claim, counterclaim, dispute or matter is more than $200,000 (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than $200,000 (exclusive of interest and costs).

G8.6.7. By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs G8.6.4 and G8.6.5 may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds $200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.

G8.6.8 The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal.

CERTIFICATE OF SERVICE

I, Jessica Stine, an authorized representative of Margolis Edelstein, hereby certify that I have served a true and correct copy of the foregoing document upon all counsel and parties of record this 20th day of April, 2004, by placing the same in the United States First Class Mail, postage prepaid, at Camp Hill, Pennsylvania, addressed as follows:

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald
7929 Westpark Drive, Suite 400
McLean, VA 22102-4224
Attorney for Plaintiff

Francis X. McTiernan, Jr., Esquire
437 Grant Street, Suite 1624
Pittsburgh, PA 15219-6101
Attorney for Sweetland Engineering

By: Jessica Stine
Jessica Stine

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

vs.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant,

vs.

SWEETLAND ENGINEERING & ASSOCIATES, INC.,

Additional Defendant.

CIVIL DIVISION

NO. 01-1265-CD

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252 (d) TO JOINDER COMPLAINT OF DEFENDANT

NOTICE TO PLEAD:

You are hereby notified to file a written response to the enclosed **NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d)** within 20 days from service hereof or a judgment may be entered against you.

By: Jeffrey A Kubay

PAUL M. MANNIX, ESQUIRE
JEFFREY A. KUBAY, ESQUIRE
Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

Filed on behalf of Additional Defendant:
Sweetland Engineering & Associates, Inc.

Counsel of Record for this Party:
PAUL M. MANNIX, ESQUIRE
PA ID No. 76225

JEFFREY A. KUBAY, ESQUIRE
PA ID No. 76378

WAYMAN, IRVIN & MCAULEY, LLC
Firm #583
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219

412-566-2970
412-391-1464 (fax)

FILED

MAY 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

:210085.1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
Plaintiff,	)	NO. 01-1265-CD
vs.	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
Defendant,	)	
vs.	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
Additional Defendant.	)	

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252 (d) TO JOINDER COMPLAINT OF DEFENDANT

AND NOW, comes the Additional Defendant, SWEETLAND ENGINEERING & ASSOCIATES, INC., by and through their attorneys, WAYMAN, IRVIN & MCAULEY, LLC, and files the following **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA.R.C.P. 2252(D) TO JOINDER COMPLAINT OF DEFENDANT**, in support whereof it avers the following:

ANSWER

1. With respect to the averments contained in Paragraph 1 of the Joinder Complaint, the same are admitted.

2. With respect to the averments contained in Paragraph 2 of the Joinder Complaint, no responsive pleading is required from this Additional Defendant because Defendant Wallaceton-Boggs Municipal Authority (hereinafter "Authority") seeks to incorporate by reference the Complaint of Continental Construction, Inc. (hereinafter "CCI") without admission or adoption.

3. With respect to the averments contained in Paragraphs 3 of the Joinder Complaint, the same are admitted. (The Joinder Complaint contains two Paragraphs 3, the averments of which are both admitted).

4. With respect to the averments contained in Paragraph 4 of the Joinder Complaint, the same are admitted.

5. With respect to the averments contained in Paragraph 5 of the Joinder Complaint, the same are admitted.

6. With respect to the averments contained in Paragraph 6 of the Joinder Complaint, the same are admitted.

7. With respect to the averments contained in Paragraph 7 of the Joinder Complaint, the same are admitted.

8. With respect to the averments contained in Paragraph 8 of the Joinder Complaint, the same are admitted.

9. With respect to the averments contained in Paragraph 9 of the Joinder Complaint, the same are admitted.

10. With respect to the averments contained in Paragraph 10 of the Joinder Complaint, the same are admitted.

11. With respect to the averments contained in Paragraph 11 of the Joinder Complaint, the unspecified "factual summary" and the allegations of negligence set forth in CCI's Complaint against the Authority pertain generally and specifically to the Authority, and accordingly, no responsive pleading is required from this Additional Defendant. To the extent a response is required, said averments that are believed to be incorporated are denied because said averments fail to set forth with specificity any specific agents, servants, and/or employees of this Additional Defendant. To the extent a further response is required to Paragraph 12 of CCI's Complaint, which the Authority seeks to incorporate by reference in its Joinder Complaint, said averments are conclusions of law to which no responsive pleading is required.

12. With respect to the averments contained in Paragraph 12 of the Joinder Complaint, the same are admitted in part and denied in part. It is admitted that in or about November 1998, the Authority and Sweetland entered into a Contract pertaining generally to the performance of professional engineering services in connection with the installation of waste water collection, conveyance, and treatment facility serving Wallaceton Borough and portions of Boggs Township, Clearfield County, Pennsylvania. By way of further response, said Contract is a writing which speaks for itself, and accordingly, any attempt to paraphrase and interpret said document is specifically denied.

13. With respect to the averments contained in Paragraph 13 of the Joinder Complaint and its sub-parts (a)-(f), said averments are conclusions of law to which no responsive pleading is required. To the extent a responsive pleading may be deemed to be required, said averments are specifically denied.

14. With respect to the averments contained in Paragraph 14 of the Joinder Complaint, said averments are conclusions of law to which no responsive pleading is required. To the extent a responsive pleading may be deemed to be required, it is specifically denied that Sweetland was negligent, reckless, or careless with respect to any of the matters set forth in CCI's Complaint and/or the Authority's Joinder Complaint.

15. With respect to the averments contained in Paragraph 15 of the Joinder Complaint, said averments are conclusions of law to which no responsive pleading is required. To the extent a responsive pleading may be deemed to be required, said averments are specifically denied.

WHEREFORE, this Additional Defendant, Sweetland Engineering & Associates, Inc., denies any and all liability in this matter and requests that judgment be entered in its favor.

NEW MATTER

AND NOW, comes the Additional Defendant, SWEETLAND ENGINEERING & ASSOCIATES, INC., and files the following **NEW MATTER**, in support whereof it avers the following:

16. Additional Defendant hereby incorporates Paragraph 1-15 as if the same were set forth herein at length.

17. The Joinder Complaint filed against this Additional Defendant fails to state a cause of action upon which relief can be granted.

18. Any and all claims against this Additional Defendant are barred by the doctrines of laches, estoppel, and/or waiver.

19. Any and all injuries and damages sustained by Plaintiff CCI, if any, are a result of the superseding, intervening, and/or independent cause over which this Additional Defendant had no control for which this Additional Defendant cannot be held be held liable.

20. Any and all claims against this Additional Defendant are barred in whole or in part by lack of privity between this Additional Defendant and Plaintiff.

21. The claims against this Additional Defendant are barred by the Economic Loss Doctrine.

22. The claims of Defendant Authority are barred by the failure of Plaintiff to comply with the terms of those parties' Contract and specifications relevant to the project.

23. This Additional Defendant asserts all affirmative defenses set forth in Rule 1030 of the Pennsylvania Rules of Civil Procedure including, but not limited to, accordance satisfaction, consent, failure of consideration, justification, statute of frauds, statute of repose, and statute of limitations.

24. Plaintiff's claims are barred or limited by its failure to mitigate damages, if any.

25. Pursuant to the procurement code of this Commonwealth, Additional Defendant seeks an award of its attorney's fees and expenses.

26. Any and all claims against Additional Defendant and/or any recovery by Plaintiff is barred in whole or in part by the doctrines of recoupment and set-off.

NO. 01-1265-CD

NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d)

AND NOW, comes the Additional Defendant, SWEETLAND ENGINEERING & ASSOCIATES, INC., and files the following **NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d)**, in support whereof it avers the following:

27. Additional Defendant hereby incorporates Paragraph 1-26 as if the same were set forth herein at length.

28. This Additional Defendant continues to deny any and all liability to Plaintiff and/or Defendant Authority. However, if it is determined at time of trial that this Additional Defendant is liable, then in that event, this Additional Defendant files this crossclaim pursuant to Rule 2252(d) under the Pennsylvania Rules of Civil Procedure.

29. Solely for the purposes of this crossclaim, this Additional Defendant hereby incorporates by reference, as though fully set forth herein, the averments of Plaintiff's Complaint and avers that Defendant is solely liable to Plaintiff or jointly and/or severally liable to Plaintiff, or in the alternative, liable over to this Additional Defendant for indemnity and/or contribution.

JURY TRIAL DEMANDED.

Respectfully submitted,

WAYMAN, IRVIN & MCAULEY, LLC

Jeffrey A. Kubay

PAUL M. MANNIX, ESQUIRE
PA ID No. 76225
JEFFREY A. KUBAY, ESQUIRE
PA ID No. 76378
Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

No. 01-1265-CD

I, CHRISTINA M. FETZER, CFO, have read the foregoing **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252 (d) TO JOINDER COMPLAINT OF DEFENDANT** and verify that the statements contained therein are true to the best of my knowledge, information and belief.

This statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date: 5.13.04

CHRISTINA M. FETZER, CFO
Authorized Representative of Sweetland Engineering & Associates, Inc.

No. 01-1265-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252 (d) TO JOINDER COMPLAINT OF DEFENDANT** has been served on the following counsel of record by first class U.S. mail, postage pre-paid, or by hand delivery, this 13th day of May, 2004:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102

WAYMAN, IRVIN & MCAULEY, LLC

Jeffrey A. Kubay

PAUL M. MANNIX, ESQUIRE
JEFFREY A. KUBAY, ESQUIRE

Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

:210085.1

BARRY A. KRONTHAL, ESQUIRE
Pa. Supreme Court I.D. No. 55672
MARGOLIS EDELSTEIN
3510 Trindle Road
Camp Hill, Pennsylvania 17011

Telephone: [717] 975-8114
Fax: [717] 975-8124
E-Mail: bkronthal@margolisedelstein.com

Attorney for Defendant:
Wallaceton-Boggs Municipal Authority

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	NO. 01-1265-CD
v.	JURY TRIAL DEMANDED
SWEETLAND ENGINEERING, Additional Defendant.	

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter the appearance of Barry A. Kronthal on behalf of Defendant Wallaceton-Boggs Municipal Authority.

Respectfully submitted,
MARGOLIS EDELSTEIN.

By: _____
Barry A. Kronthal, Esquire
Attorney I.D. No. 55672
3510 Trindle Road
Camp Hill, PA 17011
(phone) 717-975-8114
(fax) 717-975-8124
Attorney for Defendant Wallaceton-Boggs Municipal Authority

7/23/04

FILED EGK
m/11:34 BD
AUG 30 2004 Copy to CIA
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Corinne N. Driver, an authorized representative of Margolis Edelstein, hereby certify that I have served a true and correct copy of the foregoing document upon all counsel and parties of record this 26TH day of AUGUST, 2004, by placing the same in the United States First Class Mail, postage prepaid, at Camp Hill, Pennsylvania, addressed as follows:

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald
7929 Westpark Drive, Suite 400
McLean, VA 22102-4224
Attorney for Plaintiff

Francis X. McTiernan, Jr., Esquire
437 Grant Street, Suite 1624
Pittsburgh, PA 15219-6101
Attorney for Sweetland Engineering

By: _____
Corinne N. Driver

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PRAECIPE FOR CHANGE OF ADDRESS

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon
Pa. I.D. #76232

WATT, TIEDER, HOFFAR &
FITZGERALD, LLP

8405 Greensboro Drive, Suite 100
McLean, VA 22102
(703) 749-1000
(703) 893-8029 Fax

FILED EGK NO CC
m/12:58 BH
SEP 24 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PRAECIPE FOR CHANGE OF ADDRESS

TO: Prothonotary of Clearfield County, William Shaw
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Please note the following new address for counsel of record to Plaintiff, Continental Construction, Inc., in the above-referenced action:

Kevin J. McKeon, Esq.
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Drive, Suite 100
McLean, Virginia 22102
(703) 749-1000
(703) 893-8029 Fax

Respectfully submitted,

By: _____

Kevin J. McKeon (Pa. I.D. 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Drive, Suite 100
McLean, VA 22102
(703) 749-1000
(703) 893-8029 Fax

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2004, a true and correct copy of the foregoing Praecipe for Change of Address was mailed via first class, United States mail, postage prepaid, upon the following:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Counsel of Record for Wallaceton-Boggs Municipal Authority

Francis X. McTiernan, Jr., Esquire
Jeffrey A. Kubay, Esquire
Wayman Irvin & McAuley, L.L.C.
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Counsel of Record for Sweetland Engineering & Associates, Inc.

Kevin J. McKeon

FILED
NOV 29 2004
William A. Shaw
Prothonotary

ROLF E. KROLL, ESQUIRE
Pa. Supreme Court I.D. No. 47243
SHAUN J. MUMFORD, ESQUIRE
Pa. Supreme Court I.D. No. 84176
MARGOLIS EDELSTEIN
3510 Trindle Road
Camp Hill, Pennsylvania 17011

Telephone: [717] 975-8114
Fax: [717] 975-8124
E-Mail: bkronthal@margolisedelstein.com

Attorney for Defendant:
Wallaceton-Boggs Municipal Authority

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	NO. 01-1265-CD
v.	JURY TRIAL DEMANDED
SWEETLAND ENGINEERING, Additional Defendant.	

MOTION OF DEFENDANT, WALLACETON-BOGGS MUNICIPAL AUTHORITY, FOR LEAVE OF COURT TO FILE A NEW MATTER AND AMENDED COUNTER-CLAIM TO THE COMPLAINT OF PLAINTIFF, CONTINENTAL CONSTRUCTION, INC.

AND NOW, comes Defendant, Wallaceton-Boggs Municipal Authority ("Wallacton-Boggs"), by and through its counsel, Margolis Edelstein, and moves for leave of Court to file a New Matter and an Amended Counter-Claim to the Complaint of Plaintiff, Continental Construction, Inc. ("CCI"), and avers the following in support thereof:

1. CCI commenced the above-captioned breach of contract action by filing a Complaint on or about August 8, 2001, in the Clearfield County Court of Common Pleas. A copy of just the face page of CCI's Complaint, per the request of the Prothonotary, is attached hereto as Exhibit "A".

2. In its Complaint, CCI alleges a breach of the contract it entered into with Wallaceton-Boggs for the construction of a sanitary sewer system. *See* Exhibit "A".

3. On October 9, 2001, Wallaceton-Boggs, by way of its prior counsel, filed an Answer with Counter-Claim against CCI, denying any and all allegations of wrongdoing and alleging that the breach of contract, if any, was by CCI. A copy of just the face page of the Answer with Counter-Claim, per the request of the Prothonotary, is attached hereto as Exhibit "B".

4. On May 16, 2002, following a Court Order granting permission to do so, Wallaceton-Boggs joined Additional Defendant, Sweetland Engineering and Associates, Inc. ("Sweetland"), the engineer on the sanitary sewer project.

5. After current counsel entered its appearance for Wallaceton-Boggs, it became aware of potential affirmative defenses, including governmental immunity and a liquidated damages clause in the contract between it and CCI, that were not raised by prior counsel.

6. As a result, Wallaceton-Boggs files the instant motion, pursuant to Pa.R.C.P. No. 1033, for leave of Court to file a New Matter and an Amended Counter-Claim to CCI's Complaint. A copy of the proposed New Matter and Amended Counter-Claim is attached hereto as Exhibit "C".

7. Pa.R.C.P. No. 1033 states, in relevant part, that:

> A party, either by filed consent of the adverse party or by leave of court, may at any time...amend his pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new...defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

Id.

8. As stated above, Wallaceton-Boggs' proposed New Matter and Amended Counter-Claim will included those affirmative defenses gleaned from discovery, including governmental immunity and a liquidated damages clause from the contract between Wallaceton-Boggs and CCI.

9. The rule in Pennsylvania is that amendments to pleadings should be liberally allowed. *Posternack v. American Casualty*, 421 Pa. 21, 24, 218 A.2d 350, 351 (1966).

10. Such leave is to be allowed by the court absent a showing of prejudice to the opposing party. *Id.*

11. Wallaceton-Boggs' Motion for Leave of Court to File an Amended New Matter and Counter-Claim is being filed well in advance of trial, as no trial date has even been set as of this time.

12. In addition, CCI cannot claim that it was not already on notice of the liquidated damages clause, because the same is part of the executed contract between Wallaceton-Boggs and CCI.

13. Finally, no formal discovery and no depositions have yet been taken in this case and, therefore, CCI has not lost its opportunity to question any witness it chooses with regard to the issues raised by the New Matter and Amended Counter-Claim.

14. As such, CCI is not in any way prejudiced by the New Matter and Amended Counter-Claim proposed by Wallaceton-Boggs.

15. Based on the foregoing, Wallaceton-Boggs should be granted leave to file a New Matter and Amended Counter-Claim, raising the affirmative defenses gleaned during discovery, including the aforementioned governmental immunity and liquidated damages clause.

WHEREFORE, Defendant, Wallaceton-Boggs Municipal Authority, respectfully requests that this Honorable Court grant its Motion for Leave of Court to File a New Matter and Amended Counter-Claim to the Complaint filed by Plaintiff, Continental Construction, Inc., pursuant to Pa.R.C.P. No. 1033.

Respectfully submitted,
MARGOLIS EDELSTEIN,

Date: 11-24-04 By: _____

Rolf E. Kroll, Esquire
Attorney I.D. No. 47243
Shaun J. Mumford, Esquire
Attorney I.D. No. 84176
3510 Trindle Road
Camp Hill, PA 17011
(phone) 717-975-8114
(fax) 717-975-8124
Attorney for Defendant Wallaceton-Boggs Municipal Authority

Exhibit A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant.

COMPLAINT IN CIVIL ACTION

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon, Esquire
Pa. I.D. #76232

FLUKE, WEIERS & SCHMITT, P.C.
Firm I.D. #029

1400 The Bank Tower
Pittsburgh, PA 15222
(412) 261-3800

JURY TRIAL DEMANDED

I hereby certify this to be a true and attested copy of the original statement filed in this case.

AUG 03 2001

Attest: William L. Prothonotary

Exhibit B

filed
10/8/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUANTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.,
Plaintiff,

v.

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,
Defendant.

No. 01-1265-CD

Type of Pleading:

Answer to Complaint
and Counterclaim

Filed on behalf of:
Defendant

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Exhibit C

NEW MATTER

208. The answers contained in paragraphs 1 - 207 are incorporated herein by reference as if set forth in their entirety.

209. Wallaceton-Boggs Municipal Authority is a local agency entitled to governmental immunity pursuant to the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. §8501, et seq.

210. Plaintiff's recoverable damages, if any, are subject to the limitations provided by the Political Subdivision Tort Claims Act and, specifically, §8553.

211. Plaintiff's claims may be barred or limited as a consequence of its own breach of contract.

212. Plaintiff failed to mitigate its damages.

213. Plaintiff's damages, if any, were due solely to the acts and/or omissions of third persons and/or parties whom Wallaceton-Boggs Municipal Authority did not control and/or for whom Wallaceton-Boggs Municipal Authority is not legally liable and/or otherwise responsible.

214. Plaintiff's Complaint fails to set forth any causes of action against Wallaceton-Boggs Municipal Authority upon which relief may be granted.

215. No act or failure to act on the part of Wallaceton-Boggs Municipal Authority caused any damage to Plaintiff.

216. Wallaceton-Boggs Municipal Authority is entitled to liquidated damages for Plaintiff's breach of contract.

217. Plaintiff's claims, if any, are barred by the applicable statute of limitations, laches and/or estoppel.

218. At all time relevant hereto, Wallaceton-Boggs Municipal Authority acted in accordance with all applicable standards, and all statutory, municipal and/or regulatory standards.

219. Wallaceton-Boggs Municipal Authority was in no way responsible for the design, manufacturer or installation of the subject sanitary sewer system.

220. Wallaceton-Boggs Municipal Authority in entitled to sovereign immunity.

221. Wallaceton-Boggs Municipal Authority did not receive notice of the claim as required by 42 Pa.C.S.A. §5522.

WHEREFORE, Defendant Wallaceton-Boggs Municipal Authority respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff, with costs assessed to Plaintiff.

AMENDED COUNTER-CLAIM

COUNT I

222. That bid proposals for the Wallaceton-Boggs Municipal Authority Sanitary Sewer Project were opened on April 6, 2000.

223. That following inspection of the bids, it was determined that Continental Construction, Inc., was the low bidder.

224. That Wallaceton-Boggs Municipal Authority awarded the contract for construction of the project to Continental Construction, Inc., and a copy of all contract documents was signed by the parties on or about June 21, 2000.

225. That both parties to this litigation are in possession of a complete copy of all contract documents.

226. That subsequent to the awarding of the bid, Ms. Julie Marzella, who is believed by Wallaceton-Boggs Municipal Authority to be a principle officer of Continental Construction,

Inc., informed Wallaceton-Boggs Municipal Authority that she had underbid the contract and demanded that Wallaceton-Boggs Municipal Authority disclose the amount of funding set aside for contingencies.

227. That Wallaceton-Boggs Municipal Authority issued a Notice to Proceed to Continental Construction, Inc., following which Continental Construction, Inc., failed to initiate construction activities for a period of 34 days following receipt of said Notice.

228. That at all times during the course of construction, the officers, employees and agencts of Continental Construction, Inc., adopted an adversarial posture toward Wallaceton-Boggs Municipal Authority, its employees and its agents.

229. That during the court of construction, Continental Construction, Inc., failed to adopt a viable construction plan or to adhere to a construction timetable.

230. That during the course of the construction, Continental Construction, Inc., intentionally and willfully engaged in a course of conduct so as to cause construction delays and in the following particulars:

(a) Continental Construction, Inc., represented to Wallaceton-Boggs Municipal Authority that manhole covers manufactured by McGill Sanitary were approved by PennDOT when in fact, said manhole covers were not approved and, therefore, could not be installed within PennDOT right-of-ways without contravening PennDOT regulations and contract specifications.

(b) Continental Construction, Inc.'s, failure to adopt appropriate E&S Controls during the course of construction prompted DEP to demand revision to Wallaceton-Boggs Municipal Authority's erosion and sedimentation plan, which

was approved by DEP on March 22, 2000.

(c) Continental Construction, Inc., requested a 92 day extension as a result of a DEP order to halt construction in the Simeling Run area although there was adequate and ample work that could be performed upon other areas of the project.

(d) Continental Construction, Inc., made unreasonable and vexatious claims for unforeseen and differing site conditions despite the fact that the plans, specifications and bid documents clearly required all bidders to inspect the site in advance and to fully investigate site conditions including the substrata.

(e) In addition to failing to make a proper site inspection as required by the contract documents, specifications and bid documents, Continental Construction, Inc., failed to inspect the right-of-way needs of its excavation for which activities it would have been entitled to be compensated for extra work under the contract.

(f) Continental Construction, Inc., demanded unreasonable compensation to relocate a storm water line in a trench which it had already excavated in order to install the sanitary sewer line and in addition, requested an unreasonable extension of time on the contract.

(g) Continental Construction, Inc., requested unreasonable compensation and extension of work schedule to relocate manholes A51 and A53.

(h) Continental Construction, Inc., requested unreasonable compensation and extension of work schedule to relocate manholes A21 through A28.

(i) Continental Construction, Inc., presented Wallaceton-Boggs Municipal Authority with a fraudulent claim for delivery of 2876.36 cubic yards of fill

material, which material was never delivered to the site.

(j) Continental Construction, Inc., refused to comply with its obligations under the contract documents and specifications to perform necessary road repairs.

(k) Continental Construction, Inc., presented a claim for additional compensation alleging that Wallaceton-Boggs Municipal Authority was to provide two on-site dump sites, when in fact, it was made clear to all contractors, including Continental Construction, Inc., that one dump site would be provided on the Darrell Dufour property.

(l) Continental Construction, Inc., presented a claim to Wallaceton-Boggs Municipal Authority for installing additional wye's for $80.00 per unit, which amount was unreasonably excessive and, therefore, rejected by Wallaceton-Boggs Municipal Authority, which instructed Continental Construction, Inc., not to install the wyes and for which Continental Construction, Inc., is seeking compensation.

(m) Ms. Marzella repeatedly threatened Wallaceton-Boggs Municipal Authority with a civil rights action alleging that Continental Construction, Inc., was a woman-owned business enterprise.

(n) Ms. Marzella repeatedly made verbal misrepresentations to Wallaceton-Boggs Municipal Authority's engineer to the extent that the engineer, by letter dated October 4, 2000, requested that all future communications between the engineer and Continental Construction, Inc., be in writing.

(o) As a direct result of the obstreperous, vexatious, intentional and fraudulent

conduct on the part of Continental Construction, Inc., the project was delayed to the extent that substantial completion did not occur until April 18, 2001.

(p) Final construction has not been completed on the project and its remains uncompleted at the time of the filing of this counter-claim.

WHEREFORE, Wallaceton-Boggs Municipal Authority claims delay damages and liquidated damages from Continental Construction, Inc., in the excess of $25,000.00 as provided by the contract.

COUNT II

231. That Wallaceton-Boggs Municipal Authority incorporates paragraphs 1 through 230 hereof by reference and makes them part hereof.

232. That as a result of the construction delays incurred by the obstreperous, vexatious, intentional and fraudulent conduct of Continental Construction, Inc., Wallaceton-Boggs Municipal Authority has incurred hard costs for additional inspection fees in the amount of $122,102.17.

233. That as a result of the construction delays incurred by the obstreperous, vexatious, intentional and fraudulent conduct of Continental Construction, Inc., Wallaceton-Boggs Municipal Authority has incurred additional interest costs in the amount of $7,310.40.

234. That as a result of the construction delays incurred by the obstreperous, vexatious, intentional and fraudulent conduct of Continental Construction, Inc., Wallaceton-Boggs Municipal Authority has incurred clerical and rental costs in the amount of $7,110.00.

WHEREFORE, Wallaceton-Boggs Municipal Authority claims delay damages and liquidated damages from Continental Construction, Inc., in the excess of $25,000.00 as provided

by the contract.

COUNT III

235. That That Wallaceton-Boggs Municipal Authority incorporates paragraphs 1 through 234 hereof by reference and makes them part hereof.

236. That Continental Construction, Inc., has failed to complete construction of the project or to correct defective work.

237. That a list of defects and the cost to correct them to the extent available at the time of filing this counter-claim is attached to the Answer to Complaint and Counterclaim as Exhibit "I".

WHEREFORE, Wallaceton-Boggs Municipal Authority claims delay damages and liquidated damages from Continental Construction, Inc., in the excess of $25,000.00 as provided by the contract.

Respectfully submitted,
MARGOLIS EDELSTEIN,

Date: _____ By: _____

Rolf E. Kroll, Esquire
Attorney I.D. No. 47243
Shaun J. Mumford, Esquire
Attorney I.D. No. 84176
3510 Trindle Road
Camp Hill, PA 17011
(phone) 717-975-8114
(fax) 717-975-8124
Attorney for Defendant Wallaceton-Boggs Municipal Authority

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing WRIT TO JOIN ADDITIONAL DEFENDANT on all counsel of record by placing the same in the United States mail at Camp Hill, Pennsylvania, first-class postage prepaid, on the 24th day of November, 2004, and addressed as follows:

George S. Test, Esquire
Solicitor - Wallaceton-Boggs Municipal Authority
P.O. Box 706
Philipsburg, PA 16866

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald
7929 Westpark Drive, Suite 400
McLean, VA 22102-4224
Attorney for Plaintiff

Paul Mannix, Esquire
437 Grant Street, Suite 1624
Pittsburgh, PA 15219-6101
Attorney for Sweetland Engineering

MARGOLIS EDELSTEIN

By: _____
Secretary

FILED

NOV 29 2004

William A. Shaw
Prothonotary

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	:	
	:	CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	:	NO. 01-1265-CD
v.	:	
	:	JURY TRIAL DEMANDED
SWEETLAND ENGINEERING, Additional Defendant.	:	

RULE

AND NOW, this 6TH day of December, 2004, upon consideration of the attached Motion of Defendant, Wallaceton-Boggs Municipal Authority, for Leave of Court to File a New Matter and Amended Counter-Claim, a Rule is hereby issued upon Plaintiff, Continental Construction, Inc., to show cause why the motion should not be granted. Rule returnable the 29 day of December, 2004, for filing written response.

BY THE COURT:

/s/ Fredric Ammerman

J.

FILED
DEC 06 2004
William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830
PHONE: (814) 765-2641
FAX: 1-814-765-7649

DAVID S. MEHOLICK
COURT ADMINISTRATOR

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

No. 01-1265-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

PLAINTIFF,

VS.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

DEFENDANT,

VS.

SWEETLAND ENGINEERING & ASSOCIATES, INC.,

ADDITIONAL DEFENDANT.

CIVIL DIVISION
NO. 01-1265-CD

ADDITIONAL DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.'S NOTICE OF SERVICE OF FIRST SET OF INTERROGATORIES AND FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF

FILED ON BEHALF OF ADDITIONAL DEFENDANT:
SWEETLAND ENGINEERING & ASSOCIATES, INC.

COUNSEL OF RECORD FOR THIS PARTY:

PAUL M. MANNIX, ESQUIRE
PA ID NO. 76225

JEFFREY A. KUBAY, ESQUIRE
PA ID NO. 76378

WAYMAN, IRVIN & MCAULEY, LLC
FIRM #583
1624 FRICK BUILDING
437 GRANT STREET
PITTSBURGH, PA 15219

412-566-2970 (PHONE)
412-391-1464 (FAX)

FILED 1cc
m/1:27 BH
DEC 10 2004
William A. Shaw
Prothonotary/Clerk of Courts

No. 01-1265-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
	)	
PLAINTIFF,	)	NO. 01-1265-CD
	)	
VS.	)	
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
DEFENDANT,	)	
	)	
VS.	)	
	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
	)	
ADDITIONAL DEFENDANT.	)	

ADDITIONAL DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.'S NOTICE OF SERVICE OF REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF

KINDLY TAKE NOTICE that **Additional Defendant Sweetland Engineering & Associates, Inc.'s First Set of Interrogatories and First Set of Request for Production of Documents Directed to Plaintiff** have been served upon **Plaintiff's counsel, Kevin J. McKeon, Esquire, WATT, TIEDER, HOFFAR & FITZGERALD, LLP, 7929 Westpark Drive, Suite 400, McLean, VA 22102** by first-class, U.S. mail, postage pre-paid this 8th day of December, 2004.

:218080.1

No. 01-1265-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

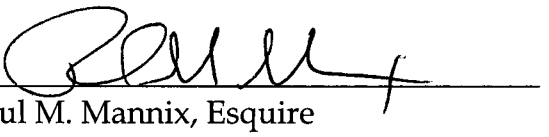
CONTINENTAL CONSTRUCTION, INC.,	CIVIL DIVISION
PLAINTIFF,	NO. 01-1265-CD
VS.	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	
DEFENDANT,	
VS.	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	
ADDITIONAL DEFENDANT.	

ADDITIONAL DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.'S NOTICE OF SERVICE OF REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF

KINDLY TAKE NOTICE that **Additional Defendant Sweetland Engineering & Associates, Inc.'s First Set of Interrogatories and First Set of Request for Production of Documents Directed to Plaintiff** have been served upon **Plaintiff's counsel, Kevin J. McKeon, Esquire, WATT, TIEDER, HOFFAR & FITZGERALD, LLP, 7929 Westpark Drive, Suite 400, McLean, VA 22102** by first-class, U.S. mail, postage pre-paid this 8th day of December, 2004.

:218080.1

Respectfully submitted,
WAYMAN, IRVIN & McAULEY, LLC



Paul M. Mannix, Esquire
PA ID No. 76225

Jeffrey A. Kubay, Esquire
PA ID No. 76378

Attorneys for Additional Defendant,
Sweetland Engineering & Associates, Inc.

No. 01-1265-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF SERVICE FIRST SET OF INTERROGATORIES AND FIRST SET OF REQUEST FOP PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF, CONTINENTAL CONSTRUCTION, INC.,** has been served on the following counsel of record by first-class U.S. mail, postage pre-paid, or by hand-delivery, this 8 day of December, 2004:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
MARGOLIS, EDELSTEIN
P.O. Box 932
Harrisburg, PA 17108-0932

Kevin J. McKeon, Esquire
WATT, TIEDER, HOFFAR & FITZGERALD, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102

WAYMAN, IRVIN & MCAULEY, LLC

PAUL M. MANNIX, ESQUIRE
JEFFREY A. KUBAY, ESQUIRE

Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

:218080.1

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	:	
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	:	CIVIL ACTION - LAW NO. 01-1265-CD
v.	:	
SWEETLAND ENGINEERING, Additional Defendant.	:	JURY TRIAL DEMANDED

AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing RULE on all counsel of record by placing the same in the United States mail at Camp Hill, Pennsylvania, first-class postage prepaid, on the 9th day of December, 2004, and addressed as follows:

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald
7929 Westpark Drive, Suite 400
McLean, VA 22102-4224
Attorney for Plaintiff

FILED
m/2:30 BK
DEC 13 2004
NO CC
William A. Shaw
Prothonotary/Clerk of Courts

Paul Mannix, Esquire
437 Grant Street, Suite 1624
Pittsburgh, PA 15219-6101
Attorney for Sweetland Engineering

Respectfully submitted,
MARGOLIS EDELSTEIN,

Date: 12-9-04

By: _____

Rolf E. Kroll, Esquire
Attorney I.D. No. 47243
Shaun J. Mumford, Esquire
Attorney I.D. No. 84176
3510 Trindle Road
Camp Hill, PA 17011
(phone) 717-975-8114
(fax) 717-975-8124
Attorney for Defendant Wallaceton-Boggs Municipal Authority

TIME-DATE STAMP

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	:	
	:	CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	:	NO. 01-1265-CD
v.	:	
	:	JURY TRIAL DEMANDED
SWEETLAND ENGINEERING, Additional Defendant.	:	

RULE

AND NOW, this 6th day of December, 2004, upon consideration of the attached Motion of Defendant, Wallaceton-Boggs Municipal Authority, for Leave of Court to File a New Matter and Amended Counter-Claim, a Rule is hereby issued upon Plaintiff, Continental Construction, Inc., to show cause why the motion should not be granted. Rule returnable the 29 day of December, 2004, for filing written response.

BY THE COURT:

/s/ Fredric J. Ammerman

J.

I hereby certify this to be a true and attested copy of the original statement filed in this case.

DEC 06 2004

Attest.

Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc., Plaintiffs, vs. Wallaceton-Boggs Municipal Authority, Defendant, vs. Sweetland Engineering & Associates, Inc., Additional Defendant.	Case No. 01-1265-CD PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR LEAVE OF COURT TO FILE NEW MATTER AND AMENDED COUNTERCLAIM Filed on Behalf of Plaintiff: Continental Construction, Inc.

Counsel of Record For This Party:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

FILED no cc
61 m/11:28
DEC 29 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiffs,	)	
	)	
vs.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
vs.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR LEAVE TO FILE NEW MATTER AND AMENDED COUNTERCLAIM

And now, comes Plaintiff, Continental Construction, Inc., by and through its undersigned counsel, and in Answer to the Defendant's Motion, states as follows:

1. Admitted.

2. Admitted, except that the Complaint speaks for itself and also alleges a cause of action for discrimination against the Defendant.

3. Admitted.

4. Admitted.

5. Plaintiff is without knowledge as to when Defendant's counsel became aware of "potential affirmative defenses," and respectfully reserves the right to plead in reply to and/or move to dismiss any affirmative defenses.

6. No response is necessary.

7. Admitted that Pa. R. Civ. P. 1033 states as quoted by Defendant.

8. No response necessary, except that Defendant has not requested any discovery.

9. Paragraph 9 of Defendant's Motion states a conclusion of law to which no response is necessary.

10. Paragraph 10 of Defendant's Motion states a conclusion of law to which no response is necessary.

11. Admitted.

12. It is admitted that the contract at issue includes a "liquidated damages clause," but it is denied that such clause provides an affirmative defense to Defendant, and Plaintiff respectfully reserves the right to plead in reply to and/or move to dismiss any affirmative defenses.

13. Denied to the extent that Plaintiff has served Interrogatories and Document Requests on both the Defendant and Additional Defendant, and those parties have provided partial responses, including production of several boxes of Project Records, respectively. Furthermore, Additional Defendant has also serve Interrogatories and Document Requests. Plaintiff respectfully reserves the right to move to compel more thorough and complete responses to its previous discovery requests, and to serve additional discovery requests. It is admitted that no depositions have yet been taken.

14. Paragraph 14 of Defendant's Motion states a conclusion of law to which no response is necessary, and Plaintiff respectfully reserves the right to plead in reply and answer to, and/or move to dismiss Defendant's New Matter and Amended Counterclaim.

15. Paragraph 15 of Defendant's Motion states a conclusion of law to which no response is necessary. Plaintiff respectfully reserves the right to plead in reply and answer to, and/or move to dismiss any New Matter or Amended Counterclaim filed on behalf of Defendant.

Wherefore, Plaintiff, Continental Construction, Inc., respectfully reserves the right to plead in reply and answer to, and/or move to dismiss any New Matter or Amended Counterclaim filed on behalf of Defendant.

DATED: December 28, 2004

Respectfully submitted:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

Attorney for Plaintiff,
Continental Construction, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this 28th day of December 2004, a true and correct copy of the foregoing PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR LEAVE OF COURT TO FILE NEW MATTER AND AMEDED COUNTERCLAIM was delivered via U.S. Mail, postage pre-paid, to the following:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis Edelstein
3510 Trindle Road
Camp Hill, PA 17011

Attorneys for Defendant

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Gregory T. Gledhill

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc., Plaintiff, v. Wallaceton-Boggs Municipal Authority, Defendant, v. Sweetland Engineering & Associates, Inc., Additional Defendant.	Case No. 01-1265-CD **MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** Filed on Behalf of Plaintiff: Continental Construction, Inc.

Counsel of Record For This Party:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

FILED acc Atty McKeon
m 10:48 Bctl
MAR 21 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

And now comes Plaintiff, Continental Construction, Inc., ("CCI") by and through its undersigned counsel, and files the following Motion for Leave to File Amended Complaint pursuant to Pa. R. Civ. P. 1033, and in support thereof, states as follows:

1. CCI commenced this action against the Wallaceton-Boggs Municipal Authority ("Authority") on or about August 3, 2001, and the Authority joined Sweetland Engineering & Associates, Inc., ("Engineer") as an Additional Defendant on or about April 29, 2002.

2. CCI seeks to file an Amended Complaint asserting its right to obtain relief in a tort action directly against the Engineer based on the Pennsylvania Supreme Court's recent decision in Bilt-Rite Contractors, Inc. v. The Architectural Studio, No. 74 MAP 2002, 2005 WL 120794 (Pa. Jan. 19, 2005) (copy attached as Exhibit A).

3. Due to its contractual relationship with the Authority, CCI did not assert any tort causes of action against the Authority in its original Complaint, but in support of its breach of contract action against the Authority, CCI did allege facts which would support its recovery via negligent misrepresentation against the Engineer (see, e.g., Complaint, ¶¶ 7, 12, 16-17, 34, 37, 58, 62, 68, 74-77, 108, 123, 132-134, 141-147, a copy of which is attached hereto for convenience under Exhibit B).

4. CCI did not bring any action directly against the Engineer because prior to the Supreme Court's decision in Bilt-Rite, the Pennsylvania Superior Court had barred contractors lacking privity from seeking economic damages against design professionals in tort, as a matter of law. See Linde Enters., Inc. v. Hazelton City Auth., 602 A.2d 897 (Pa. Super. Ct. 1992).

5. In what it called "a case of first impression," however, the Pennsylvania Supreme Court in Bilt-Rite implicitly overruled Linde, and expressly adopted Section 552 of the Restatement (Second) of Torts permitting a contractor to seek relief for economic damages "where information is negligently supplied by one in the business of supplying information, such as an architect or design professional, and where it is foreseeable that the information will be used and relied upon by third persons, even if the third parties have no direct contractual relationship with the supplier of information." Bilt-Rite, 2005 WL 120794, at *17.

6. By its decision in Bilt-Rite, the Pennsylvania Supreme Court removed any legal impediment to CCI's ability to obtain relief directly from the Engineer based on a tort theory, as it recognized a contractor's right to obtain relief directly against a design professional despite a lack of privity and despite the economic loss rule, via a cause of action sounding in negligent misrepresentation under Section 552 of the Restatement (Second) of Torts.

7. By virtue of the Engineer's status as an additional defendant, CCI "shall recover" from the Engineer to the extent the Engineer is "found liable to [CCI] alone or jointly with [the Authority] as though such additional defendant had been joined as a defendant and duly served and the initial pleading of the plaintiff had averred such liability." Pa. R. Civ. P. 2255(c).

8. While CCI has the ability to recover against the Engineer pursuant to Rule 2255(c), it lacks privity with the Engineer and therefore, cannot recover against the Engineer based on the breach of contract theory set forth in its Complaint.

9. Based on the new law created by the Pennsylvania Supreme Court in Bilt-Rite, however, CCI *can* recover against the Engineer for Negligent Misrepresentation despite its lack of privity and despite the economic loss rule, and therefore CCI seeks to amend its Complaint to assert a count for Negligent Misrepresentation.

10. This amendment will cause no prejudice because the Engineer is already a party to the action, discovery is ongoing, and no depositions have been taken.

11. Pursuant to Pa. R. Civ. P. 1033, CCI sought the consent of the other parties to file the Amended Complaint attached hereto under Exhibit C.

12. While the Authority has indicated that it has "no position" on the filing of the Amended Complaint, the Engineer has indicated that it will oppose any motion for leave to file the Amended Complaint.

Wherefore, CCI respectfully requests that this Honorable Court enter the attached proposed Order allowing CCI to file and serve the Amended Complaint, or in the alternative, requests that the Court issue the attached proposed Rule requiring the Authority and the Engineer to show cause why this Motion should not be granted.

Respectfully submitted,

DATED: March 18, 2005

Kevin J. McKeon (Pa. ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
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McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

Attorney for Plaintiff,
Continental Construction, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	(PROPOSED)
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

ORDER

And now, this _____ day of _____, 2005, upon consideration of Plaintiff's Motion for Leave of Court to File Amended Complaint, it is hereby **ORDERED** that said Motion is **GRANTED**; and it is further **ORDERED** that Plaintiff is to serve the Amended Complaint upon the Defendant and Additional Defendant within twenty (20) days from the date hereof.

_____, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	(PROPOSED)
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

RULE

And now, this 22nd day of March, 2005, upon consideration of Plaintiff's Motion for Leave of Court to File Amended Complaint, a Rule is hereby issued upon Defendant, Wallaceton-Boggs Municipal Authority, and Additional Defendant, Sweetland Engineering & Associates, Inc., to show cause why the Motion should not be granted. Rule returnable the 12 day of April, 2005, for filing written response.

Fredric J Ammerman, J.

FILED 2cc
01/2:13 Atty McKeon
MAR 22 2005 GK
William A. Shaw
Prothonotary/Clerk of Courts

A

Westlaw.

2005 WL 120794
866 A.2d 270, 2005 WL 120794 (Pa.)
(Cite as: 2005 WL 120794 (Pa.))

H

Briefs and Other Related Documents

Supreme Court of Pennsylvania.
BILT-RITE CONTRACTORS, INC., Appellant
v.
THE ARCHITECTURAL STUDIO, Appellee.

Argued Dec. 4, 2002.
Decided Jan. 19, 2005.

Background: General contractor brought action against architect for alleged negligent misrepresentations in plans and specifications upon which contractor relied in submitting winning bid for construction of school. The Court of Common Pleas, Lehigh County, No. 1999-C-2492, Edward D. Reibman, J., granted architect's objections in nature of demurrer, and the Superior Court, No. 2166 EDA 2000, affirmed. Contractor appealed.

Holding: The Supreme Court, No. 74 MAP 2002, Castille, J., held that economic loss rule did not bar contractor's negligent misrepresentation suit against architect.
Reversed and remanded.

Cappy, C.J., filed dissenting opinion.

Saylor, J., filed dissenting opinion.

[1] Appeal and Error ⇐863

30k863 Most Cited Cases

[1] Appeal and Error ⇐917(1)
30k917(1) Most Cited Cases
Because the Supreme Court sits in review of the trial court's grant of the defendant's preliminary objections in the nature of a demurrer, the salient facts are derived solely from the allegations in the plaintiff's complaint; in such instance, all material facts as set forth in the complaint, as well as all inferences reasonably deducible therefrom, must be accepted as true.

[2] Appeal and Error ⇐842(1)
30k842(1) Most Cited Cases
The question of the reach and scope of an action for negligent misrepresentation between parties where there is no privity of contract is a pure question of law; as such, the Supreme Court's review is plenary.

[2] Fraud ⇐64(1)
184k64(1) Most Cited Cases
The question of the reach and scope of an action for negligent misrepresentation between parties where there is no privity of contract is a pure question of law; as such, the Supreme Court's review is plenary.

[3] Appeal and Error ⇐863
30k863 Most Cited Cases
The standard of review for preliminary objections in the nature of a demurrer
is limited: the question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.

[4] Pleading ⇐218(1)
302k218(1) Most Cited Cases
Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.

[5] Negligence ⇐202
272k202 Most Cited Cases
A cause of action in negligence requires allegations that establish the breach of a legally recognized duty or obligation that is causally connected to the damages suffered by the complainant.

[6] Negligence ⇐210
272k210 Most Cited Cases
The primary element in any negligence cause of action is that the defendant owes a duty of care to the plaintiff.

[7] Negligence ⇐215
272k215 Most Cited Cases
The determination of whether a duty exists in a

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negligence case involves the weighing of several discrete factors which include: (1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution.

[8] Fraud ⇐25
184k25 Most Cited Cases
Economic loss rule did not bar general contractor's recovery against architect for purely economic damages due to alleged negligent misrepresentations by architect in specifications and plans for construction of school upon which contractor relied in submitting winning bid, despite lack of privity of contract; architect had obligation to exercise ability, skill and care customarily used by architects on construction projects, and it was reasonably foreseeable that contractor would rely on architect's specifications; abrogating *Linde Enterprises, Inc. v. Hazelton City Authority,* 412 Pa.Super. 67, 602 A.2d 897. Restatement (Second) of Torts § 552.

[9] Fraud ⇐13(3)
184k13(3) Most Cited Cases

[9] Fraud ⇐21
184k21 Most Cited Cases
The tort of negligent misrepresentation is narrowly tailored, as it applies only to businesses which provide services and/or information that they know will be relied upon by third parties in their business endeavors, and it includes a foreseeability requirement, thereby reasonably restricting the class of potential plaintiffs. Restatement (Second) of Torts § 552.
Mason Avrigian, Jr., Blue Bell, for Bilt-Rite Contractors, Inc., appellant.

Maura Zajac McGuire, Nicholas Noel, Easton, for The Architectural Studio, appellee.

Before: CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR and EAKIN, JJ.

OPINION

Justice CASTILLE.

***1** This appeal raises the first impression question of whether a building contractor may maintain a negligent misrepresentation claim against an architect for alleged misrepresentations in the architect's plans for a public construction contract, where there was no privity of contract between the architect and the contractor, but the contractor reasonably relied upon the misrepresentations in submitting its winning bid and consequently suffered purely economic damages as a result of that reliance. The Superior Court found as a matter of law that, absent privity of contract, the contractor could not maintain such a tort action against the architect. For the reasons that follow, we reverse the order of the Superior Court and remand to the trial court for further proceedings.

[1] Because this Court sits in review of the trial court's grant of appellee's preliminary objections in the nature of a demurrer, the salient facts are derived solely from the allegations in appellant's complaint. In such an instance, all material facts as set forth in the complaint, as well as all inferences reasonably deducible therefrom, must be accepted as true. *Estate of Witthoeft v. Kiskaddon,* 557 Pa. 340, 733 A.2d 623, 624 n. 1 (1999) The facts are as follows: East Penn School District entered into a contract with appellee, The Architectural Studio ("TAS"), pursuant to which TAS provided architectural services for the design and construction of a new school in Lower Macungie Township, Lehigh County. The services included the preparation of plans, drawings and specifications to be submitted to contractors for the purpose of preparing bids for the construction of the new school. In February of 1997, the school district solicited bids from contractors for all aspects of the project and included TAS's plans, drawings and specifications in the bid documents supplied to the contractors. Appellant, Bilt-Rite Contractors, Inc. ("Bilt-Rite"), submitted its bid for general construction work on the project and on May 6, 1997, the school district awarded the general construction contract to Bilt-Rite, who was the lowest responsible bidder. On June 6, 1997, the school district and Bilt-Rite entered into a contract for the project in the base amount of $16,238,900. The contract specifically referred to, and incorporated by reference, TAS's plans, drawings and specifications.

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TAS's plans provided for the installation of an aluminum curtain wall system, sloped glazing system and metal support systems, all of which TAS expressly represented could be installed and constructed through the use of normal and reasonable construction means and methods, using standard construction design tables. Once construction commenced, however, Bilt-Rite discovered that the work including the aluminum curtain wall, sloped glazing and metal support systems could not be constructed using normal and reasonable construction methods, and instead required Bilt-Rite to employ special construction means, methods and design tables, resulting in substantially increased construction costs.

***2** On November 19, 1999, Bilt-Rite sued TAS on a theory of negligent misrepresentation under Section 552 of the Restatement (Second) of Torts, claiming that TAS's specifications were false and/or misleading, and seeking damages for its increased construction costs. [FN1] On December 9, 1999, TAS filed preliminary objections in the nature of a demurrer, arguing that: (1) Bilt-Rite's action was barred by the "economic loss doctrine," which holds that a tort plaintiff cannot recover for purely economic losses; and (2) TAS owed no duty to Bilt-Rite, with whom it had no contractual relationship. On June 22, 2000, the trial court sustained TAS's preliminary objections and dismissed Bilt-Rite's complaint.

The trial court deemed itself bound by the Superior Court's decision in *Linde Enterprises, Inc. v. Hazelton City Authority,* 412 Pa.Super. 67, 602 A.2d 897 (1992), *appeal denied,* 533 Pa. 601, 617 A.2d 1275 (1992), which, the court noted, held that a contractor cannot prevail against an architect for economic damages suffered as a result of negligence in drafting specifications, absent privity of contract between the contractor and the architect. Slip op. at 2 n. 1. The trial court found further support for its decision in *Palco Linings, Inc. v. Pavex, Inc.,* 755 F.Supp. 1269 (M.D.Pa.1990). In *Palco,* the district court, which was applying Pennsylvania law in a diversity action, addressed the operation of the economic loss rule in actions involving negligent misrepresentation. *Palco* noted that the economic loss rule reflects the concern that tort law (unlike contract law) is not generally intended to compensate parties for losses suffered as a result of a breach of duties which are assumed only by agreement; to recover in tort, there must be a breach of a duty of care imposed by law and a resulting injury. 755 F.Supp. at 1271. Looking to Illinois cases for persuasive authority, the *Palco* court suggested two viable exceptions to the economic loss rule in negligent misrepresentation cases: (1) where the defendant intentionally makes a false misrepresentation; and (2) where the defendant is in the business of supplying information for the guidance of others and makes negligent misrepresentations. The *Palco* court found that neither exception should apply to architects sued in their capacity as design professionals. *Id.* at 1274.

Following its discussion of *Linde* and *Palco,* the trial court noted that, although Pennsylvania courts have cited Section 552 of the Restatement (Second) with approval, no court had held that it permitted such a cause of action against a design professional. The trial court found that Bilt-Rite's action did not fall into either of the exceptions outlined in *Palco,* and therefore, Bilt-Rite had failed to set forth a viable Section 552 cause of action against TAS.

On Bilt-Rite's appeal, the Superior Court affirmed in an unpublished decision. The panel noted that the absence of privity is not an absolute bar to recovery for economic damages in tort; however, the question of which business relationships should be deemed exempt from the privity requirement (and thus exempt from the economic loss rule) must be decided on a case-by case basis. The panel further noted that the architect-contractor relationship had never been expressly included or excluded from the reach of Section 552. Therefore, the panel reasoned, its "review is guided by the principle that the tort of negligent misrepresentation, like the [sic] any action in negligence, requires the existence of a duty owed by one party to another." Slip op. at 9, *citing, inter alia, Bortz v. Noon,* 556 Pa. 489, 729 A.2d 555, 561 (1999) and *Gibbs v. Ernst,* 538 Pa. 193, 647 A.2d 882, 889 (1994). The question then became whether, as a matter of law, an architect such as TAS who prepares and develops design drawings and specifications, owes a duty to the contractors who apply those specifications in the situation where no contractual relationship exists. The panel recognized that question was controlled by *Linde;* since Bilt-Rite enjoyed no privity of contract with TAS, TAS owed it no duty, and Bilt-Rite could not

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proceed upon its negligent misrepresentation claim.

*3 [2][3][4] This Court granted further review because the question of the viability of a negligent representation tort action in the architect/contractor/no privity scenario is one of first impression for this Court; the question has split other state courts and the federal courts, *see Linde,* 602 A.2d at 901(discussing competing authority); and the question has split the lower federal courts in Pennsylvania, attempting to predict how this Court would rule on the question in light of our previous applications of Section 552. *Compare Palco, supra* with *Borough of Lansdowne v. Sevenson Env. Services,* 2000 WL 1886578 (E.D.Pa.2000), at *4-*5 (unpublished memorandum by Weiner, J.). The question of the reach and scope of the action is a pure question of law; as such, this Court's review is plenary. *E.g. MCI WorldCom, Inc. v. Pennsylvania Public Utility Comm'n,* 577 Pa. 294, 844 A.2d 1239 (2004). Further, "the standard of review for preliminary objections in the nature of a demurrer is limited; the question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it." *MacElree v. Philadelphia Newspapers, Inc.,* 544 Pa. 117, 674 A.2d 1050, 1056 (1996) (quoting *AM/PM Franchise v. Atlantic Richfield,* 526 Pa. 110, 584 A.2d 915, 921 (1990)). Thus, this Court is charged with deciding whether, under the facts alleged in Bilt-Rites complaint, tort recovery is possible under Pennsylvania law.

Citing *Rempel v. Nationwide Ins. Co.,* 471 Pa. 404, 370 A.2d 366 (1977) (plurality opinion) and *Gibbs v. Ernst, supra,* Bilt-Rite argues that this Court has recognized the tort of negligent misrepresentation and, in so doing, has approved the Restatement (Second) Section 552 formulation of the action. [FN2] Bilt-Rite further argues that, when this Court has set forth the elements of the negligent misrepresentation action (relying upon the Restatement for those elements), it has not included contractual privity. Instead, Bilt-Rite argues, this Court has focused on whether there was reliance upon the misrepresentations and the foreseeability of that reliance. Bilt-Rite argues that the focus on foreseeability, rather than privity, is sensible because it is "the foreseeability of one party using and relying upon the misrepresentations of another which creates the duty." Brief for Appellant, 13.

Bilt-Rite posits that the school district hired TAS to prepare plans, drawings and specifications with the intention of conveying those documents to contractors for purposes of bidding; in fact, the sole purpose of the design documents was for their use by contractors in the bidding process. [FN3] Bilt-Rite argues that TAS knew that contractors would rely upon its designs and specifications in submitting bids and yet failed to exercise reasonable care in preparing those documents. Since Bilt-Rites reliance on the designs was both justifiable and foreseeable, Bilt-Rite argues, its complaint falls squarely within Section 552.

*4 In further support of its construction of Section 552, Bilt-Rite notes that Comment h and Illustration 9 to comment h of Section 552 exactly describe this case. Comment h provides in pertinent part:

> *h. Persons for whose guidance the information is supplied.* The rule stated in this Section subjects the negligent supplier of misinformation to liability only to those persons for whose benefit and guidance it is supplied. In this particular his liability is somewhat more narrowly restricted than that of the maker of a fraudulent representation (see § 531), which extends to any person whom the maker of the representation has reason to expect to act in reliance upon it.
>
> Under this Section, as in the case of the fraudulent misrepresentation (see § 531), it is not necessary that the maker should have any particular person in mind as the intended, or even the probable, recipient of the information. In other words, it is not required that the person who is to become the plaintiff be identified or known to the defendant as an individual when the information is supplied. It is enough that the maker of the representation intends it to reach and influence either a particular person or persons, known to him, or a group or class of persons, distinct from the much larger class who might reasonably be expected sooner or later to have access to the information and foreseeably to take some action in reliance upon it. It is enough, likewise, that the maker of the representation knows that his recipient intends to transmit the information to a similar person, persons or group. It is sufficient, in other words, insofar as the

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> plaintiff's identity is concerned, that the maker supplies the information for repetition to a certain group or class of persons and that the plaintiff proves to be one of them, even though the maker never had heard of him by name when the information was given. It is not enough that the maker merely knows of the ever-present possibility of repetition to anyone, and the possibility of action in reliance upon it, on the part of anyone to whom it may be repeated.

Illustration 9 then sets forth a specific example regarding bids for a government construction contract:

> 9. The City of A is about to ask for bids for work on a sewer tunnel. It hires B Company, a firm of engineers, to make boring tests and provide a report showing the rock and soil conditions to be encountered. It notifies B Company that the report will be made available to bidders as a basis for their bids and that it is expected to be used by the successful bidder in doing the work. Without knowing the identity of any of the contractors bidding on the work, B Company negligently prepares and delivers to the City an inaccurate report, containing false and misleading information. On the basis of the report C makes a successful bid, and also on the basis of the report D, a subcontractor, contracts with C to do a part of the work. By reason of the inaccuracy of the report, C and D suffer pecuniary loss in performing their contracts. B Company is subject to liability to C and to D.

***5** Bilt-Rite avers that Comment h proves that the tort does not include a privity requirement, but rather, contemplates that the plaintiff may be a member of a group or class of persons for whose use the defendant supplies the information. BiltRite also argues that Illustration 9 demonstrates that design professionals such as TAS should be deemed subject to liability to contractors like BiltRite for negligent misrepresentations in their design documents.

Bilt-Rite also submits that the Superior Courts own precedent does not require privity of contract in a negligent misrepresentation action and that federal district courts applying Pennsylvania law, as well as courts in other jurisdictions, have permitted contractors to maintain negligent misrepresentation claims against design professionals without requiring privity. Indeed, BiltRite notes, a majority of the jurisdictions to consider the question have not required contractual privity. Finally, BiltRite claims that the Superior Court's reliance upon its precedent in *Linde* was misplaced because *Linde* involved a general negligence claim, not a negligent misrepresentation claim, which is distinctly different. In Bilt-Rite's view, the economic loss rule does not bar the claim *sub judice* because negligent misrepresentation is a recognized exception to the economic loss doctrine.

TAS's response mirrors the reasoning of the courts below. Advancing a more traditional view of tort law, TAS responds that the economic loss doctrine precludes causes of action based upon negligence or negligent misrepresentation where the plaintiff claims only economic loss and the parties are not in privity of contract. TAS argues that the doctrine applies to services rendered by design professionals, and Pennsylvania courts and federal courts in Pennsylvania have held that design professionals cannot be held liable for purely economic losses to a party with whom they share no contractual relationship. TAS further argues that Section 522 should be construed as inapplicable to cases involving design professionals, and cites as support the Pennsylvania state and federal cases relied upon below, which have declined to apply Section 552 to design professionals absent privity. TAS argues that all of the cases relied upon by Bilt-Rite to reach a contrary conclusion involve professions other than design professions.

The trio of cases that comprise this Court's recent jurisprudence on the negligent misrepresentation tort provide little guidance in resolving the specific issue in this appeal. *Bortz v. Noon, supra,* relied upon by the Superior Court, involved a real estate agent who allegedly failed to disclose to buyers that the septic system on the property the buyers were purchasing had not passed a dye test intended to show whether the system was functioning properly. After the septic system failed an initial dye test, the sellers' real estate agent informed the buyers that the sellers would repair the system and had retained a contractor to perform repairs. Settlement on the property was delayed until the repairs were completed and the system passed a dye test. Approximately one month after the initial failed dye test, a representative of the title company involved in settlement informed the real estate agent that the

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system had passed a new dye test, and the agent relayed that information to the buyers. Neither the agent nor the buyers reviewed any written report. On the day of settlement, the proceedings were delayed because, according to the real estate agent, the county was inspecting the work on the septic system. During the actual settlement, the title company's representative told everyone present, including the real estate agent and the buyers, that the system had passed the dye test.

***6** After settlement, the buyers discovered that the septic system had not passed a dye test. The system was retested and failed, forcing the buyers to connect to the public sewer system at a cost of $15,000. The buyers filed an equity action against the real estate agency, the title company, and the contractor who repaired the septic system, seeking monetary damages and rescission of the sale. The chancellor denied rescission, granted judgment against the real estate agency in the amount of $15,300, and held that neither the title company nor the contractor were liable as they owed no duty to the buyers.

On appeal, the Superior Court affirmed the judgment against the real estate agency, but reversed the finding in favor of the title company and the contractor, holding that both could be liable to the buyers for negligent misrepresentation. This Court granted allocatur limited to the question of whether the real estate agent had a duty to ascertain that the septic system had actually passed a dye test and whether her failure in this regard constituted a misrepresentation to the buyers. In distinguishing the tort of negligent misrepresentation from intentional misrepresentation, we stated:

> Negligent misrepresentation requires proof of: (1) a misrepresentation of a material fact; (2) made under circumstances in which the misrepresenter ought to have known its falsity; (3) with an intent to induce another to act on it; and (4) which results in injury to a party acting in justifiable reliance on the misrepresentation. *See, e.g., Gibbs,* 538 Pa. at 210, 647 A.2d at 890, *citing,* Restatement (Second) Torts 552. The elements of negligent misrepresentation differ from intentional misrepresentation in that the misrepresentation must concern a material fact and the speaker need not know his or her words are untrue, but must have failed to make a reasonable investigation of the truth of these words. *Id.* Moreover, like any action in negligence, there must be an existence of a duty owed by one party to another. *Id.*

Bortz, 729 A.2d at 561. Although this Court acknowledged Restatement Section 552 through the citation to *Gibbs,* we did not purport to adopt Section 552 as a matter of Pennsylvania law. Indeed, the elements of negligent misrepresentation that this Court set forth in the *Bortz* decision are not identical to Section 552's elements.

The *Bortz* Court concluded that there was no special relationship among the buyers, the agent, the contractor or the title company that would require the real estate agent to engage in an investigation regarding the dye test. Further, we determined that the agent was not in a superior position to the buyers in terms of verifying that the system had passed the dye test. In addition to finding that the agent owed no duty to the buyers, we held that she had no duty to make an independent investigation of the contractor's report because she had no contractual or agency relationship with the contractor.

***7** *Gibbs v. Ernst, supra,* considered the issue of negligent misrepresentation in the distinct context of adoption. The Gibbs had adopted a child whom the adoption agency represented to be a five-year-old boy who had been verbally abused and neglected by his mother. (It turned out the child was actually seven-years-old at the time.) The Gibbs had specifically informed the agency that they wanted to adopt a child who had no history of physical or sexual abuse or any mental or emotional problems. During the nine months between the placement of the child with the Gibbs and the finalization of the adoption, the Gibbs repeatedly asked the adoption agency if there was any information about the boy that had not been disclosed to them. They were assured that they had been provided everything that the county's Children and Youth department had given to the agency. Immediately after the adoption was final, the child began to reveal severe emotional problems, becoming violent and aggressive toward younger children. [FN4] After inpatient evaluations at two different institutions, the child was transferred by court order to Eastern State School and Hospital, declared dependent by the court, and placed in the

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custody of Philadelphia's Department of Human Services (DHS).

Shortly after DHS acquired custody, and nearly four years after the adoption was finalized, the Gibbs learned for the first time that the boy had been severely sexually and physically abused and neglected by his biological parents, that he had been in ten different foster homes during his first six years, that he had an extensive history of aggression and hostility towards other children, and that his biological mother had once attempted to sever a body part. Both Children and Youth and the adoption agency had all of this information in their possession prior to the finalization of the adoption, yet they failed to disclose it even though the Gibbs had specifically requested any negative information.

The Gibbs sued the adoption agency and Children and Youth in the Court of Common Pleas of Bucks County, alleging wrongful adoption and negligent placement of an adoptive child. The defendants filed preliminary objections in the nature of a demurrer, which the trial court granted. The Commonwealth Court reversed, *Gibbs v. Ernst,* 150 Pa.Cmwlth. 154, 615 A.2d 851 (1991), and this Court granted further review of the viability of the Gibbs' tort action.

This Court first determined that the Gibbs' complaint did not set forth novel theories of recovery, but rather advanced claims cognizable under long-standing common law pertaining to intentional and negligent misrepresentations. We noted that "Pennsylvania has long recognized the common law tort of negligent misrepresentation," citing to cases from federal district and bankruptcy courts in Pennsylvania and our Superior Court. *Gibbs,* 647 A.2d at 891. In analyzing the negligent misrepresentation claim presented, we set forth the elements quoted later in the *Bortz* opinion and also cited to Section 552 with approval, albeit this Court did not explicitly state that it was adopting the Section 552 formulation as a matter of Pennsylvania tort law. The *Gibbs* Court emphasized, as the *Bortz* Court did, that "[a]ny negligence action is premised on the existence of a duty owed by one party to another." *Id.* at 890. Recognizing that foreseeability is an important element of duty, we held that an adoption agency could only be liable to adoptive parents for those conditions reasonably foreseeable at the time of placement. Because the Gibbs had alleged that the adoption agency should have known that the affirmative representations it had made to the Gibbs regarding the boys past were false, this Court found that the Gibbs had stated a viable cause of action for negligent misrepresentation that should be permitted to proceed to trial.

***8** This Court's plurality opinion in *Rempel v. Nationwide Ins. Co., supra,* involved alleged negligent misrepresentations made by an insurance agent. There, the plaintiff and her husband had purchased a thirty-year mortgage protection policy on the husbands life through a Nationwide agent. In the event of the husband's death, the policy was to pay any outstanding mortgage balance on the Rempels' home. Shortly after purchasing the policy, the plaintiff contacted the Nationwide agent to inquire whether Nationwide could match a policy offered by a competing insurer that would provide the same mortgage protection plus $5,000 in life insurance protection for a few dollars more per month. The agent consulted with Nationwide and then informed the plaintiff that Nationwide would provide a $5,000 whole life policy with a twenty-year family income rider, which would offer the same protection as the competing insurers policy for a few dollars per month over the cost of the original policy. Plaintiff and her husband opted to stay with Nationwide and take the new coverage and, thereafter, paid the premiums until nine years later when the plaintiff's husband died.

After her husband's death, the plaintiff telephoned the Nationwide agent who informed her that the policy would pay her approximately $16,000, representing the $11,100 outstanding mortgage balance plus the $5,000 life insurance benefit. A few days later, however, the agent advised the plaintiff that the policy would pay her only a lump sum of $10,430. The plaintiff sued Nationwide and its agent, contending that the agent had either negligently or fraudulently misrepresented that the policy he sold them would pay the outstanding mortgage balance plus $5,000 of life insurance. The trial court directed a verdict in the plaintiff's favor for $10,430. The court also denied Nationwide's motion for a directed verdict on the plaintiff's remaining claims and withdrew the fraudulent misrepresentation claim from the jury, but permitted the jury to consider plaintiff's negligent

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misrepresentation claim. The jury found in favor of the plaintiff in the amount of $5,670, and the Superior Court affirmed. *Rempel v. Nationwide Life Ins. Co.*, 227 Pa.Super. 87, 323 A.2d 193 (1974). This Court granted allocatur.

The plurality cited with approval to Section 552, but did not expressly adopt it. Nationwide's challenge on appeal focused on whether the plaintiff and her husband were justified in relying on the representations made by the Nationwide agent when they could have simply read the policy to discover the actual coverage the policy afforded. This Court determined that, under the facts of the case, the evidence was sufficient to present a jury question of whether the plaintiff and her husband had justifiably relied on the agent's representations.

In summary, although this Court has cited with approval to Section 552 on multiple occasions, this Court has never explicitly adopted Section 552 as the law in Pennsylvania, much less the specific comment and illustration which are relied upon by Bilt-Rite here. In *Bortz,* the most recent case, we listed the elements of the common law tort of negligent misrepresentation, elements which appear to be more general in nature than those in Section 552, which perhaps would make the tort available against a narrower class of tortfeasors. Thus, on their face, the *Bortz* elements would appear to apply to any allegation of negligent misrepresentation against any individual no matter what his occupation or relationship to the injured party. In contrast, Section 552 is more specific, appearing to apply on its face only to actions against those individuals who, in the course of their business, profession or employment, or in any other transaction in which they have a pecuniary interest, supply false information for the guidance of others in their business transactions. It is arguable that Section 552, due to its specific nature, was not necessarily intended to apply in a case such as *Gibbs,* because an adoption might not be considered a business transaction and because Children and Youth likely did not have a pecuniary interest in the adoption at issue, while the more general *Bortz* common law elements would apply in such a case. Thus, it would appear that, if this Court were to adopt Section 552, it would not supplant the common law version of the Pennsylvania tort, but rather, would serve to clarify the elements of the tort as they apply to those in the business of supplying information to others for pecuniary gain.

***9** [5][6][7] General principles of tort law of necessity come into play in our examination of the common law tort of negligent misrepresentation and the tort embodied in Section 552, and those principles are particularly pertinent in this case. It is well established that, "[a] cause of action in negligence requires allegations that establish the breach of a legally recognized duty or obligation that is causally connected to the damages suffered by the complainant." *Sharpe v. St. Luke's Hospital,* 573 Pa. 90, 821 A.2d 1215, 1218 (2003) (citation omitted). "The primary element in any negligence cause of action is that the defendant owes a duty of care to the plaintiff." *Althaus ex rel. Althaus v. Cohen,* 562 Pa. 547, 756 A.2d 1166, 1168 (2000) The *Althaus* Court further summarized the traditional considerations of public policy involved in any assessment of the existence of a duty of care as follows:

> "In determining the existence of a duty of care, it must be remembered that the concept of duty amounts to no more than 'the sum total of those considerations of policy which led the law to say that the particular plaintiff is entitled to protection' from the harm suffered.... To give it any greater mystique would unduly hamper our system of jurisprudence in adjusting to the changing times. The late Dean Prosser expressed this view as follows:
>
> These are shifting sands, and no fit foundation. There is a duty if the court says there is a duty; the law, like the Constitution, is what we make it. Duty is only a word with which we state our conclusion that there is or is not to be liability; it necessarily begs the essential question. When we find a duty, breach and damage, everything has been said. The word serves a useful purpose in directing attention to the obligation to be imposed upon the defendant, rather than the causal sequence of events; beyond that it serves none. In the decision whether or not there is a duty, many factors interplay: The hand of history, our ideas of morals and justice, the convenience of administration of the rule, and our social ideas as to where the loss should fall. In the end the court will decide whether there is a duty on the basis of the mores of the community, 'always keeping in mind the fact that we endeavor to make a rule in

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each case that will be practical and in keeping with the general understanding of mankind.'
[Prosser, *Palsgraf Revisited,* 52 Mich. L. Rev. 1, 14-15 (1953).]"

756 A.2d at 1168-69, *quoting Sinn v. Burd,* 486 Pa. 146, 404 A.2d 672, 681 (1979) (citation and footnote from *Sinn* omitted). Accord *Sharpe,* 821 A.2d at 1219. The factors utilized in determining the existence of a duty are well-settled:

The determination of whether a duty exists in a particular case involves the weighing of several discrete factors which include: (1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution.

***10** *Althaus,* 756 A.2d at 1169 (listing cases).

The concept of duty in the tort setting can be intertwined with contractual notions of privity, as is the case here, where the task is to determine whether the relationship between the parties gives rise to a duty. In *Sharpe,* this Court considered whether the lack of a contractual relationship between the parties precluded a finding that a duty existed between the parties. There, Federal Express contracted with the defendant hospital to collect urine samples from Federal Express employees for routine, random drug testing and then forward the samples to an outside laboratory for testing. The plaintiff, a Federal Express employee/courier, reported to the hospital to provide the required urine sample, which the hospital later reported as testing positive for cocaine. The plaintiff alleged that there were problems with the chain of custody of her sample, as a result of which it was misidentified and/or mishandled. Once the hospital investigated and verified the chain of custody to Federal Express, the plaintiff's employment was terminated.

The plaintiff sued the hospital, claiming that it owed her a duty of care in regards to the collection and handling of her specimen, that it breached the duty of care, and that as a result, her test resulted in a false positive causing her to lose her job. The hospital filed a motion for summary judgment, arguing that it owed no duty to the plaintiff because the hospital's contractual relationship was with Federal Express, not the plaintiff. The lack of a professional or contractual relationship, according to the hospital, obviated the existence of any duty to the plaintiff. The trial court granted the motion for summary judgment, finding that, where a third party engages an entity to perform employee drug testing, the employee cannot maintain a negligence action against the entity. The Superior Court affirmed, declining to recognize a duty on the part of the hospital where its role was limited to collecting the specimen. President Judge McEwen dissented, opining that because the plaintiff was already employed by Federal Express and was not merely seeking employment, there is a recognized duty on the part of the hospital, requiring it to abide by a standard of reasonable and prudent conduct to prevent any undue risk of harm caused by a false positive result.

On further appeal, this Court, after citing the *Althaus* factors for determining the existence of a duty, found that the hospital indeed owed a duty to the plaintiff:

As to the first of the *Althaus* factors, a sufficient relationship exists between the Hospital and Sharpe to justify the imposition of a duty upon the Hospital to exercise reasonable care in the collection and handling of the urine specimen, despite the absence of a contract between the two parties. Specifically, Sharpe personally presented herself to the Hospital, which was aware of the purpose of the urine screening; the Hospital, in turn, should have realized that any negligence with respect to the handling of the specimen could harm Sharpe's employment.

***11** *Sharpe,* 821 A.2d at 1219. Thus, this Court recognized that a tort duty can arise absent privity of contract in that circumstance.

With these established negligence principles in mind, we next turn to an examination of the persuasiveness of the cases relied upon by the courts below in support of the holding that Bilt-Rites negligent misrepresentation claim fails as a matter of law--*i.e.,* the Superior Courts decision in *Linde* and the federal district courts *Palco* decision. In *Linde,* the plaintiff, Linde Enterprises, was the low bidder who was awarded a contract for the reconstruction of a dam in Hazel Township owned by the Hazelton City Authority (HCA). HCA hired an engineering firm, WECO, to provide the

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specifications for the dam and to supervise its construction. Linde incurred significant cost overruns, which it attributed to faulty specifications provided by the HCA and negligent supervision by WECO, and filed suit against both HCA and WECO. Following a jury trial, the jury found in favor of the plaintiff and against both defendants.

On appeal, the Superior Court reversed the jury verdict against WECO, finding that Linde could not recover in negligence against WECO because there was no privity of contract between them. The panel reasoned that a negligence claim cannot be based upon circumstances for which the law imposes no recognized duty of care on the defendant and that privity of contract is required between the parties in order to maintain a claim for professional liability. Since Linde had no contractual relationship with WECO and WECO owed no traditional duty of care to Linde, the panel held that WECO was not liable to Linde for its cost overruns, damages which were purely economic in nature. The panel further opined:

> Linde also claims that WECO as an architect drawing up design specifications owes a duty under Pennsylvania law to the contractors who apply specifications. Several states have allowed a contractor to sue an architect for economic damages suffered by negligent drafting of design specifications despite the absence of privity. *See, e.g., Donnelly Constr. Co. v. Oberg/Hunt/Gilleland,* 139 Ariz. 184, 677 P.2d 1292 (1984); *Owen v. Dodd,* 431 F.Supp. 1239 (D.C.Miss.1977) (applying Mississippi law); *Shoffner Indus. v. W.B. Lloyd Const. Co.,* 42 N.C.App. 259, 257 S.E.2d 50 (1979). However, Pennsylvania is not one of them. Moreover, there does not appear to be a clear-cut majority position on the issue in other jurisdictions. *See Annot. Tort Liability of Project Architect for Economic Damages Suffered by Contractor,* 65 A.L.R.3d 249- 265. We will continue the *status quo,* as Linde has not offered a compelling reason why we should deviate from the well-established requirement of privity to adopt a rule holding negligent architects directly liable for economic damages to contractors with whom they share no contractual relationship.

Linde, 602 A.2d at 901 (footnote omitted). Thus, the *Linde* panel's rejection of the claim derived largely from a concern that existing Pennsylvania law had yet to embrace this sort of action.

***12** In *Palco,* the U.S. District Court for the Middle District of Pennsylvania addressed the precise issue presented in this appeal in a case involving a construction project to rehabilitate a city-owned reservoir for the City of Harrisburg's Department of Public Works. Pavex, Inc., was the general contractor and Brinjac-Chester Engineers ("Brinjac") the registered architect/engineer on the job. Palco Linings subcontracted with Pavex to furnish and install a liner and cover at the reservoir. During the course of the project, complications allegedly caused Palco to incur substantial unexpected costs. When Pavex and the City refused to pay the increased expenses, Palco sued Brinjac for negligence and negligent misrepresentation. Brinjac filed a motion for summary judgment arguing, *inter alia,* that the economic loss rule barred the tort action. Palco countered that Pennsylvania applies the economic loss rule only in product liability cases and that Brinjac had mischaracterized its damages as purely economic losses. In granting Brinjac's motion for summary judgment, the district court applied the economic loss rule as a bar to recovery in an action which it deemed to be contractual in nature:

> The rationale of the economic loss rule is that tort law is not intended to compensate parties for losses suffered as [a] result of a breach of duties assumed only by agreement. Compensation in such cases requires an analysis of damages which were in the contemplation of the parties at the origination of the agreement, an analysis within the sole purview of contract law. On the other hand, the policy consideration underlying tort law is the protection of persons and property from losses resulting from *injury, Sensenbrenner v. Rust, Orling Neale Architects, Inc.,* 236 Va. 419, 374 S.E.2d 55 (1988), while the policy consideration underlying contract law is the protection of expectations bargained for. *Id.* Thus in light of these distinctions, to recover in tort a plaintiff must allege facts showing a breach of some duty imposed by law. In other words, to recover in negligence "there must be a showing of harm above and beyond disappointed expectations" evolving solely from a prior agreement. A buyer, contractor, or subcontractor's "desire to enjoy the benefit of his bargain is not an interest that tort law traditionally protects."

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See Redarowicz v. Ohlendorf, 92 Ill.2d 171, 177, 65 Ill.Dec. 411, 441 N.E.2d 324 (1982) *cited in Anderson Electric, Inc. v. Ledbetter Erection Corporation,* 115 Ill.2d 146, 104 Ill.Dec. 689, 503 N.E.2d 246 (1986).
Palco, 755 F.Supp. at 1271.

Based upon the case law from Illinois which it deemed persuasive, the *Palco* court rejected the application of Section 552, finding that liability under Section 552 is limited to those in the business of selling information upon which customers rely in taking additional action. *Id.,* citing *Hi-Grade Cleaners, Inc. v. American Permac, Inc.,* 561 F.Supp. 643 (N.D.Ill.1982). The court concluded that Section 552 applies only to occupations such as "attorneys, abstractors of title, surveyors, inspectors of goods, operators of ticker services, and banks dealing with non-depositors' checks." *Id.,* citing *Moorman Manufacturing Co., v. National Tank Co.,* 91 Ill.2d 69, 61 Ill.Dec. 746, 435 N.E.2d 443 (1982), *Anderson Electric, Inc. v. Ledbetter Erection Corporation,* 115 Ill.2d 146, 104 Ill.Dec. 689, 503 N.E.2d 246 (1986). Concluding that Palco was not induced by Brinjac's specifications to take any action it was not already contractually bound to take due to its subcontract with Pavex, and because there was no separate business transaction between Palco and Brinjac, and thus no privity of contract, the court found that Palco could not maintain a tort action against Brinjac as a matter of Pennsylvania law.

***13** As the highest court in Pennsylvania confronted with a first impression issue of Pennsylvania law, this Court is not bound by *Linde* or *Palco.* It is notable that courts in other jurisdictions have reached a result contrary to *Linde* and *Palco.* For example, *Nota Construction Corp. v. Keyes Associates,* 45 Mass.App.Ct. 15, 694 N.E.2d 401 (1998), involved a subcontractor who bid on a school construction project based upon plans and specifications prepared by an architect retained by the school district. In the plans, the architect made certain representations regarding the area surrounding the septic system. Nota Construction sued the architect claiming that it had suffered economic losses directly caused by its reliance on the architect's plans and specifications. The architect filed a motion for summary judgment arguing, *inter alia,* that Nota's negligent misrepresentation claim was barred by the economic loss doctrine. The trial court granted summary judgment in favor of the architect.

On appeal, the architect argued that the action was barred by the economic loss doctrine and that a design professional could not be held liable for negligent misrepresentation because the design professional is not in the business of supplying specific information to others to induce action. Rejecting both arguments, the Appeals Court reversed. As to the economic loss doctrine, the court noted that economic losses resulting from negligent misrepresentation are an exception to the economic loss doctrine. *Id.* at 405 (*citing Craig v. Everett M. Brooks Co.,* 351 Mass. 497, 222 N.E.2d 752 (1967)). On the second issue, the court stated simply that it is logical that the general proposition that one who negligently furnishes services to another can be liable in tort should apply to design professionals, at least where they have reason to know that the putative plaintiff will be relying upon the architect's work product:

> [T]he Supreme Judicial Court [of Massachusetts] has held that liability will be imposed in Massachusetts for the negligent furnishing of services to one not a party to the contract where the defendant knows that the party will rely on his services.... Accordingly, we see no reason why a design professional such as an architect should be exempt from liability for negligent misrepresentation to one where there is no privity of contract. This view is in accord with a number of other jurisdictions.

Id. at 405-06 (footnote and citations omitted) (collecting cases).

In another school construction case, *Donnelly Construction Co. v. Oberg/Hunt/ Gilleland,* 139 Ariz. 184, 677 P.2d 1292 (1984), the Arizona Supreme Court held that Section 552 governed an action by a contractor against an architect where the contractor had relied upon the architect's plans and specifications in bidding on a school improvement project and then suffered economic losses as a result of errors in the plans and specifications. Notably, the court found Illustration 9 to Section 552 to be "particularly enlightening and [ ] pertinent to the case." *Id.* at 1297. The court also found no privity requirement, employing the following persuasive analysis:

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> ***14** There is no requirement of privity in this state to maintain an action in tort.... Rather, an action in negligence may be maintained upon the plaintiff's showing that the defendant owed a duty to him, that the duty was breached, and that the breach proximately caused an injury which resulted in actual damages....
>
> Design professionals have a duty to use ordinary skill, care and diligence in rendering their professional services.... When they are called upon to provide plans and specifications for a particular job, they must use their skill and care to provide plans and specifications which are sufficient and adequate.... This duty extends to those with whom the design professional is in privity ... and to those with whom he or she is not....

Id. at 1295 (citations to Arizona precedent omitted).

Other jurisdictions have reached the same conclusions as the *Nota* and *Donnelly* courts in similar cases involving design architects or engineers. *See, e.g., Robert & Company Associates v. Rhodes-Haverty Partnership,* 250 Ga. 680, 300 S.E.2d 503 (1983) (where engineer knows that prospective purchasers of property could rely on his report as to condition of property, lack of privity does not shield engineer from liability to purchasers and solely economic damages are recoverable); *Jim's Excavating Service, Inc. v. HKM Associates,* 265 Mont. 494, 878 P.2d 248 (1994)(low bidder on pipeline construction project could recover purely economic losses against engineer who prepared plans and specifications for project absent privity; adopts Section 552 and cites Illustration 9 with approval); *Davidson and Jones, Inc. v. County of New Hanover,* 41 N.C.App. 661, 255 S.E.2d 580 (1979) (architect liable to general contractor who submitted low bid for county construction project based on report submitted by architect for negligent misrepresentation, absent privity and where loss was purely economic); *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.,* 320 S.C. 49, 463 S.E.2d 85 (1995) (economic loss doctrine does not bar contractor from recovering, absent privity, against engineer on theory of negligent misrepresentation in design of project); *John Martin Co., Inc. v. Morse/Diesel, Inc.,* 819 S.W.2d 428 (Tenn.1991) (Section 552 governs negligent misrepresentation claim by subcontractor that construction manager negligently supplied information intended for guidance of others so long as use of information was foreseeable; no privity required).

[8] We are persuaded by these decisions from our sister jurisdictions that: (1) this Court should formally adopt Section 552 of the Restatement (Second), which we have cited with approval in the past, as applied by those jurisdictions in the architect/contractor scenario; (2) there is no requirement of privity in order to recover under Section 552; and (3) the economic loss rule does not bar recovery in such a case. Recognizing such a cause of action, with such contours, is consistent with Pennsylvania's traditional common law formulation of the tort of negligent misrepresentation.

***15** [9] Section 552 sets forth the parameters of a duty owed when one supplies information to others, for one's own pecuniary gain, where one intends or knows that the information will be used by others in the course of their own business activities. The tort is narrowly tailored, as it applies only to those businesses which provide services and/or information that they know will be relied upon by third parties in their business endeavors, and it includes a foreseeability requirement, thereby reasonably restricting the class of potential plaintiffs. The Section imposes a simple reasonable man standard upon the supplier of the information. As is demonstrated by the existing case law from Pennsylvania and other jurisdictions, and given the tenor of modern business practices with fewer generalists and more experts operating in the business world, business persons have found themselves in a position of increasing reliance upon the guidance of those possessing special expertise. Oftentimes, the party ultimately relying upon the specialized expertise has no direct contractual relationship with the expert supplier of information, and therefore, no contractual recourse if the supplier negligently misrepresents the information to another in privity. And yet, the supplier of the information is well aware that this third party exists (even if the supplier is unaware of his specific identity) and well knows that the information it has provided was to be relied upon by that party. Section 552 is not radical or revolutionary; reflecting modern business realities, it merely recognizes that it is reasonable to

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hold such professionals to a traditional duty of care for foreseeable harm.

Like the court in *Nota,* we see no reason why Section 552 should not apply to architects and other design professionals. The rationale for this application was persuasively set forth by the Court of Appeals of North Carolina in *Davidson,* where the court stated that such a duty to foreseeable third parties flows from the architect's contractual duties to the party retaining the architect, an approach we embrace:

> An architect, in the performance of his contract with his employer, is required to exercise the ability, skill, and care customarily used by architects upon such projects.... Where breach of such contract results in foreseeable injury, economic or otherwise, to persons so situated by their economic relations, and community of interests as to impose a duty of due care, we know of no reason why an architect cannot be held liable for such injury. Liability arises from the negligent breach of a common law duty of care flowing from the parties' working relationship. Accordingly, we hold that an architect in the absence of privity of contract may be sued by a general contractor or the subcontractors working on a construction project for economic loss foreseeably resulting from breach of an architect's common law duty of due care in the performance of his contract with the owner.

***16** *Davidson,* 255 S.E.2d at 584 (citation omitted).

We recognize that a design professional's liability for economic damages to third parties cannot be without limits but, we are satisfied, Section 552 is sufficiently narrowly tailored as to ensure appropriate limitation. In *John Martin Company,* the Supreme Court of Tennessee, having adopted Section 552, discussed those appropriate limitations:

> The defendant is liable only to those, whether in contractual privity or not, for whose benefit and guidance the information is supplied. The information may be either direct or indirect. In that regard, the foreseeability of use is critical to liability.
>
> Because the information is negligently rather than intentionally supplied, courts have been careful to limit liability to only those whose use of the information is reasonably foreseeable:
>
> By limiting the liability for negligence of a supplier of information to be used in commercial transactions to cases in which he manifests an intent to supply the information for the sort of use in which the plaintiff's loss occurs, the law promotes the important social policy of encouraging the flow of commercial information upon which the operation of the economy rests.
>
> Restatement (2d) of Torts § 552 Comments (1977).

John Martin Company, 819 S.W.2d at 431-32 (*quoting* comment a).

This Court is also satisfied that specific recognition of the Section 552 formulation of this tort is consistent with this Court's traditional approach to questions of tort duty. *See Sharpe, supra; Althaus, supra.* First, although an architect or design professional may not have a contractual relationship with the contractor who ultimately suffers economic damages in reliance upon the professional's design, in an instance such as the case *sub judice,* the professional is well aware that the design will be provided to and utilized by others in their own business dealings. Second, on the question of the social utility of the conduct at issue, obviously design professional services play an important role in public and private planning. But, by the same token, given the important reliance placed upon such professional services, there is no reason to exempt such professionals from the tort consequences of a negligent failure to perform those services in a competent fashion. Third, given the limitations upon the Section 552 action which we have outlined above, this Court is satisfied that the tort more than adequately accounts for the nature of the risk the duty imposes and the foreseeability of the prospective harm. Fourth, the consequence of imposing such a duty upon design professionals is neither unreasonable nor unduly burdensome; it merely subjects them to the same sort of professional responsibility other professionals face. And finally, the Section 552 formulation of the tort will serve the overall public interest by discouraging negligence among design professionals, while not requiring any more of them than is required by the traditional reasonable man and foreseeability tort paradigm applicable to others.

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***17** Accordingly, we hereby adopt Section 552 as the law in Pennsylvania in cases where information is negligently supplied by one in the business of supplying information, such as an architect or design professional, and where it is foreseeable that the information will be used and relied upon by third persons, even if the third parties have no direct contractual relationship with the supplier of information. In so doing, we emphasize that we do not view Section 552 as supplanting the common law tort of negligent misrepresentation, but rather, as clarifying the contours of the tort as it applies to those in the business of providing information to others.

On the question of privity, as discussed earlier, this Court in *Sharpe* recognized that a similar type of tort duty can arise in the absence of privity. In any event, Section 552 imposes a duty of reasonable care upon the supplier of professional information for use by others. Both on its face and as a matter of logic, Section 552 negates any requirement of privity; therefore, we find that the absence of privity does not defeat a Section 552 claim, and does not negate Bilt-Rite's claim in the case *sub judice*.

As to the economic loss rule, the South Carolina Supreme Court took a reasoned approach to the rule in *Tommy L. Griffin Plumbing, supra,* as it discussed the realities of tort law versus contract law:

> [Our earlier] application of the "economic loss" rule maintains the dividing line between tort and contract while recognizing the realities of modern tort law. Purely "economic loss" may be recoverable under a variety of tort theories. The question, thus, is not whether the damages are physical or economic. Rather, the question of whether the plaintiff may maintain an action in tort for purely economic loss turns on the determination of the source of the duty plaintiff claims the defendant owed. A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie. A breach of duty arising independently of any contract duties between the parties, however, may support a tort action.

Tommy L. Griffin Plumbing, 463 S.E.2d at 88 (footnote and citation omitted). The court noted that economic losses are routinely allowed in tort actions in other contexts such as legal malpractice, accountant malpractice, and architect liability.

Like South Carolina, Pennsylvania has long recognized that purely economic losses are recoverable in a variety of tort actions including the professional malpractice actions noted by the South Carolina Supreme Court. We agree with that court that a plaintiff is not barred from recovering economic losses simply because the action sounds in tort rather than contract law. Here, Bilt-Rite had no contractual relationship with TAS; thus, recovery under a contract is not available to Bilt-Rite. Having found that Bilt-Rite states a viable claim for negligent misrepresentation under Section 552, and that privity is not a prerequisite for maintaining such an action, logic dictates that Bilt-Rite not be barred from recovering the damages it incurred, if proven. Indeed, to apply the economic loss doctrine in the context of a Section 552 claim would be nonsensical: it would allow a party to pursue an action only to hold that, once the elements of the cause of action are shown, the party is unable to recover for its losses. Thus, we hold that the economic loss rule does not apply to claims of negligent misrepresentation sounding under Section 552.

***18** In light of the above, it is apparent that the decisions below cannot stand. Illustration 9 to Section 552 indeed sets forth a scenario that is closely analogous to the instant case and demonstrates how Section 552 should apply here. Accepting the allegations in Bilt-Rite's complaint as true for purposes of the demurrer, TAS provided plans and specifications for the school project to the school district with full knowledge that those plans and specifications would be included in a bid package supplied to prospective bidders, and relied upon by those bidders. Bilt-Rite received the plans from the school district and, according to its complaint, relied upon them in calculating its bid, suffering economic damage as a result of alleged misrepresentations in the plans. This case falls precisely within the framework of Section 552, and therefore, it is cognizable under Pennsylvania law.

Accordingly, the order of the Superior Court is reversed and the matter is remanded to the trial court for further proceedings.

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Former Chief Justice ZAPPALA did not participate in the consideration or decision of this case.

Chief Justice CAPPY files a dissenting opinion.

Justice SAYLOR files a dissenting opinion.

CAPPY, Chief Justice, dissenting.

I respectfully dissent. While I agree with the majority that Section 552 of the Restatement (Second) of Torts is consistent with Pennsylvania law, I would hold that Section 552 does not apply in this case. Accordingly, I would affirm the order of the Superior Court.

If I were writing on a clean slate, I would take issue with the majority's formal adoption of Section 552. In my view, the common law tort of negligent misrepresentation, in requiring a particularized determination in any given case as to whether one party owed another party a duty in tort, is the vehicle that should be used to impose liability for negligent misrepresentations. *See Bortz v. Noon,* 556 Pa. 489, 729 A.2d 555, 561 (1999) I recognize, however, that the negligent misrepresentation tort presently set forth in Section 552 is an established part of Pennsylvania jurisprudence. In *Renn v. Provident Trust Co.,* 328 Pa. 481, 196 A. 8 (1938), this court acknowledged the rule of tort liability that Section 552 encompasses, stating that "we have held that when it is one's business and function to supply information he is liable, if, knowing that action will be influenced, he supplies it negligently." *Id.* at 9-10 (citations omitted), *cited in* Pennsylvania Annotations to the Restatement (First) of Torts, Section 552 and in Reporter's Notes to the Restatement (Second) of Torts, Section 552 regarding Comment c, Illustration 1.

That said, I would not allow Bilt-Rite Contractors Inc. ("Bilt-Rite") to sue The Architectural Studio ("TAS") in tort under Section 552 for cost overruns arising out of its performance of its contractual obligations on a construction project. I would, instead, follow the economic loss doctrine, which provides that purely economic losses are not recoverable under a tort theory, and preclude Bilt-Rite's suit. *See Pennsylvania Glass Sand Corp. v. Caterpillar Tractor Co.,* 652 F.2d 1165, 1169 n. 12 (3d Cir.1981). *See also* Sidney R. Barrett, Jr., *Recovery of Economic Loss in Tort for Construction Defects: A Critical Analysis,* 40 S.L.C. REV. 895 (1989) ("Barrett Article"). I believe that the doctrine's demarcation line between the law of contracts, which is designed to enforce expectations created by agreement, and the law of torts, which is designed to protect persons and their property by imposing a duty of reasonable care upon others, should be respected in this context, where multiple parties bargain and enter into a network of contracts to allocate risks and to define their respective rights and obligations. *See* Barrett Article at 894-95, 941. [FN1]

In this regard, I agree with the reasoning and conclusion of the Supreme Court of Washington in a case on all fours with the instant matter, *Berschauer/Phillips Construction Co. v. Seattle School District No. 1,* 124 Wash.2d 816, 881 P.2d 986 (1994). In *Berschauer/Phillips,* a general contractor, who expended more funds than expected and was delayed in the completion of a construction project, brought several claims against the project's architect in tort, alleging that the architectural plans were incomplete and inaccurate. As a general proposition, the court held that the economic loss doctrine precluded the contractor's tort claims, stating:

> [W]e maintain the fundamental boundaries of tort and contract law by limiting the recovery of economic loss due to construction delays to the remedies provided by contract. We so hold to ensure that the allocation of risk and the determination of potential future liability is based on what the parties bargained for in the contract. We hold parties to their contracts. If tort and contract remedies were allowed to overlap, certainty and predictability in allocating risk would decrease and impede future business activity. The construction industry in particular would suffer, for it is in this industry that we see most clearly the importance of the precise allocation of risk as secured by contract. The fees charged by architects, engineers, contractors, developers, vendors, and so on are founded on their expected liability exposure as bargained and provided for in the contract. We so hold to ensure that the allocation of risk and the determination of potential future liability is based on what the parties bargained for in the contract.

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Id. at 992.

Even though Section 552 had been adopted in Washington, the court also rejected the contractor's request to permit its Section 552 claim against the architect to proceed. The court stated that "when parties have contracted to protect against potential economic liability, as is the case in the construction industry, contract principles override the tort principles in [Section] 552 and, thus, purely economic damages are not recoverable." *Id.* at 993 (citations omitted).

Likewise, I believe that application of the economic loss doctrine is especially warranted in the construction setting, and that bargained-for contractual arrangements should govern the parties' legal relationships and their economic expectations. Therefore, I would not allow Bilt-Rite to sue TAS under Section 552 of the Restatement (Second) of Torts.

For these reasons, I respectfully dissent.

SAYLOR, Justice, dissenting.

I agree with Mr. Chief Justice Cappy that the present controversy is best resolved by invocation of the economic loss doctrine, but my reasoning proceeds from a somewhat different viewpoint in terms of the general application of such doctrine.

At the outset, in addressing the issues in this appeal, I believe that it is important to maintain the perspective that the Court is engaged in the evaluation of substantive principles under the common law, and that the nature of this exercise favors adherence to reasoned precedent. This approach reflects that the fashioning of substantive rules in matters involving weighty and competing interests (as to which inquiry must be made into the varying consequences that will attend implementation of the different options) is often best suited to the legislative province. [FN1] It is also significant that the General Assembly is aware of our precedents, and obviously, may choose to alter course in substantive affairs subject only to constitutional constraints.

My assessment therefore proceeds from this Court's long-standing practice of treating liability for negligent misrepresentations on the part of those in the business of providing information as a matter that is separate and apart from, and not subject to, the economic loss doctrine, *see, e.g., Renn v. Provident Trust Co.,* 328 Pa. 481, 482, 196 A. 8, 9-10 (Pa.1938), akin to the scheme set forth in Restatement (Second) Section 552. Accordingly, the central question of concern to me here is whether (and to what extent) persons and entities providing architectural services should be deemed to be in the business of supplying information for such purposes.

In *2314 Lincoln Park West Condominium Ass'n v. Mann, Gin, Ebel & Frazier, Ltd.,* 136 Ill.2d 302, 144 Ill.Dec. 227, 555 N.E.2d 346 (1990), the Illinois Supreme Court found design-related architectural services to be outside the general category of information services for purposes of the relevant exception to the economic loss doctrine. In so holding, the court borrowed from an Eleventh Circuit decision to contextualize the economic loss rule as follows:

> "The rule acts as a shorthand means of determining whether a plaintiff is suing for injuries arising from the breach of a contractual duty to produce a product that conforms in terms of quality or performance to the parties ['] expectations or whether the plaintiff seeks to recover for injuries resulting from the breach of the duty arising independently of the contract to produce a nonhazardous product that does not pose an unreasonable risk of injury to person or property. The economic loss rule prevents recovery in tort when a defective product has resulted in the loss of the value or use of the thing sold, or the cost of repairing it. Under such circumstances, the duty breached is generally a contractual one and the plaintiff is merely suing for the benefit of his bargain."

2314 Lincoln, 144 Ill.Dec. 227, 555 N.E.2d at 352 (quoting *Flintkote Co. v. Dravo Corp.,* 678 F.2d 942, 948 (11th Cir.1982)); *accord* Sidney R. Barrett, Jr., The Center Holds: *The Continuing Role of the Economic Loss Rule in Construction Litigation,* 11-APR CONSTRUCTION LAW 3 (1991) (observing that, for purposes of the economic loss doctrine, "an 'economic loss' is the loss of an expectancy interest created by contract, often described as the 'benefit of the bargain' "). As concerns design-related architectural services, the

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Illinois court chose to characterize these as incidental to a tangible end product or object, namely, the construction of a building, as contrasted with information services producing opinions or ideas that do not result in some tangible end product (such as attorney and accountant services). *See 2314 Lincoln,* 144 Ill.Dec. 227, 555 N.E.2d at 352-53; *accord Tolan and Son, Inc. v. KLLM Architects, Inc.,* 308 Ill.App.3d 18, 241 Ill.Dec. 427, 719 N.E.2d 288, 295 (1999) (explaining that "an architect's duty generally arises by virtue of a contract specifying the duties necessary to complete the construction of a structure"). Thus, the court was able to categorize claims for negligent misrepresentation arising from design-related architectural services within the general prohibition against non-contractual recovery for economic loss, as opposed to the information-business exception. [FN2]

It should be frankly acknowledged that the Illinois approach has its limitations, both in terms of its dependence on characterization to distinguish design-related architectural services from a broader range of services, and its practical implications in an era in which information-based products and services proliferate. *See generally Insurance Co. of N. Am. v. Cease Elec. Inc.,* 688 N.W.2d 462, 471-72 (Wis.2004) (criticizing the Illinois approach and adopting a bright-line rule that the economic loss doctrine is inapplicable to claims for the negligent provision of services). Having surveyed the many ways in which courts have addressed the competing interests involved, and recognizing that the Illinois position thus suffers from some of the drawbacks associated with common law pronouncements of substantive law, I nonetheless view it as a restrained one that best reconciles with the nature, purposes, and development of the economic loss and negligent misrepresentation doctrines in Pennsylvania, in the absence of legislative intervention.

Therefore, I concur in the Chief Justice's dissenting position that the Superior Court's order should be affirmed.

FN1. Section 552, which is entitled "Information Negligently Supplied for the Guidance of Others," provides:
(1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.
(2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and
(b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.
(3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them.
Liability under Subsection (3), according to the Comment, typically would apply to a public officer who, by his acceptance of his office, has undertaken a duty to the public to furnish information of a particular kind. For example, this subsection would apply to a recording clerk, notary public or government food inspector. It may also apply to non-government entities who are required by law to provide information for the protection of segments of the population like insurance companies who must file certain financial information with the insurance commissioner, which information may be relied upon by potential insureds. Subsection (3) is not at issue in this case and we offer no view on whether it has any place in Pennsylvania law.

FN2. Appellant fails to note that *Rempel* was a plurality opinion, and thus, it lacks

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precedential value. Moreover, although both *Rempel* and *Gibbs* cite Section 552 with approval in discussing the tort of negligent misrepresentation, neither involved the architect/contractor scenario.

FN3. Pennsylvania law required the school district to provide the design information to contractors in order to solicit bids and then award contracts to the lowest responsible bidders. *See* 24 P.S. § 7-751.

FN4. For example, the child attempted to amputate a five-year-old's arm, to suffocate a younger cousin, and to kill another cousin by hitting him over the head with a lead pipe. He also deliberately placed Clorox bleach in a cleaning solution, causing Mrs. Gibbs to burn her hands badly, and started a fire, seriously injuring a younger cousin.

FN1. In its complaint, Bilt-Rite alleges that in connection with the construction project, TAS and the owner of the constriction project entered into a contract, and that the owner and Bilt-Rite entered into a contract, which specifically referred to and incorporated by reference certain "Contract Documents", including the plans and specifications that TAS prepared. Complaint ¶¶ 5, 11.

FN1. The substantial, competing policy considerations with which this Court is faced in fashioning Pennsylvania's common law answer to this question are amply developed by the majority on the one hand, and Chief Justice Cappy, on the other. Briefly, foreclosing the cause of action for negligent misrepresentation relative to design professionals will likely increase construction costs by requiring exhaustive design investigation by contractors as a prerequisite to bidding. *See* PHILIP L. BRUNER AND PATRICK J. O'CONNOR, JR., 5 BRUNER & O'CONNOR CONSTRUCTION LAW § 17:27 (2004). As the Chief Justice emphasizes, however, allowing the tort cause of action to be maintained impairs the ability of design professionals to regulate their own risk via contractual provision. *See* Dissenting Opinion at ----, --- A.2d at ---- (quoting *Berschauer/Phillips Constr. Co. v. Seattle School Dist. No.1,* 124 Wash.2d 816, 881 P.2d 986, 992 (1994)); *see also Blake Constr. Co. v. Alley,* 233 Va. 31, 353 S.E.2d 724, 727 (1987) ("Protection against economic losses caused by another's failure to properly perform is but one provision the contractor may require in striking his bargain."). Additionally, further uncertainty results from the difficulty in determining the proper scope of economic injuries subject to redress.

FN2. As Appellee notes, the circumstances presented in Illustration 9 following Section 552 of the Restatement, relied on by the majority, *see* Majority Opinion at ----, ----, --- A.2d at ----, ----, are distinguishable from design-related architectural services, since they do not reflect end-product design, but rather, concern a pre-bid, advisory, engineering report supplying information only. *See generally Tolan,* 719 N.E.2d at 298 (distinguishing design-related architectural services from circumstances in which an architect or engineer is engaged solely to provide information based upon an evaluation, and the value of the services lies in the analytical work rather than in the tangible end product).

866 A.2d 270, 2005 WL 120794 (Pa.)

Briefs and Other Related Documents (Back to top)

. 2002 WL 32178076 (Appellate Brief) Reply Brief for Appellant, Bilt-Rite Contractors, Inc. (Sep. 13, 2002)Original Image of this Document (PDF)

. 2002 WL 32178075 (Appellate Brief) Brief for Appellee the Architectural Studio (2002)Original Image of this Document with Appendix (PDF)

END OF DOCUMENT

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant.

COMPLAINT IN CIVIL ACTION

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon, Esquire
Pa. I.D. #76232

FLUKE, WEIERS & SCHMITT, P.C.
Firm I.D. #029

1400 The Bank Tower
Pittsburgh, PA 15222
(412) 261-3800

JURY TRIAL DEMANDED

I hereby certify this to be a true and attested copy of the original statement filed in this case.

AUG 03 2001

Attest: William L. Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
WALLACETON-BOGGS	)	
MUNICIPAL AUTHORITY,	)	
	)	
Defendant.	)	

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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Clearfield, PA 16830
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
	)	
Defendant.	)	

COMPLAINT IN CIVIL ACTION

AND NOW, comes the Plaintiff, Continental Construction, Inc., by and through its attorneys, Fluke, Weiers & Schmitt, P.C., and Kevin J. McKeon, Esquire, and files the following Complaint against Defendant, Wallaceton-Boggs Municipal Authority (hereinafter "Wallaceton-Boggs"), and in support thereof alleges as follows:

1. Plaintiff, Continental Construction, Inc. ("CCI") is a Pennsylvania corporation with its registered office and place of business located at P.O. Box 126, Johnsonburg Road, Ridgway, PA 15853.

2. Defendant, Wallaceton-Boggs Municipal Authority ("Authority"), is a Municipal Corporation whose principal place of business is located at Boggs Township Offices, West Decatur, Pennsylvania 16878.

3. Sweetland Engineering & Associates, Inc. (the "Engineer") is a Pennsylvania Corporation with its principal place of business at 600 Science Park Road, State College, PA 16803.

4. In or shortly prior to December of 1999, the Authority contracted with the Engineer to design the construction and installation of approximately 48,570 Lineal Feet of 6

Inch diameter and 8 Inch diameter gravity sewer main pipeline, approximately 2,660 Lineal Feet of 6 Inch diameter force main sewer pipeline, 6,400 Lineal Feet of sewer laterals, and related appurtenances, in the Borough of Wallaceton, and Township of Boggs, in Clearfield, Pennsylvania (hereinafter "the Project").

5. In or about December of 1999, the Authority and Engineer caused the specifications and detailed construction drawings to construct the Project, collectively named as "Contract 2000-01: Wallaceton-Boggs Municipal Authority Sanitary Sewer Construction Project" (hereinafter "the Contract Documents"), to be made available to contractors, including CCI, interested in submitting bid proposals to construct the Project. A complete copy of the Project Manual containing all of the Contract Documents and Plans is not attached hereto due to the voluminous nature of these documents, and because a copy is already in the possession of the Defendant, Authority. However, a complete copy of the Contract Agreement, General Conditions, Supplementary Conditions, and the Appendix setting forth the Soil Erosion and Sediment Pollution Control Plan Narrative, is bound, covered, and filed separately under "Exhibit A to the Complaint."

6. On March 23, 2000, CCI and other potential bidders attended a Mandatory Pre-Bid Conference conducted by the Authority and the Engineer, to clarify and discuss the scope of the work called for in the Contract Documents.

7. On or about April 6, 2000, CCI submitted its bid proposal to construct the Project, on a form prescribed by the Authority, in direct reliance on the representations made by the Authority and the Engineer as set forth in the Contract Documents, and the information discussed and provided at the Pre-Bid Conference.

8. On or about April 6, 2000 the proposals of the various bidders were opened by the Authority and it was determined that CCI was the apparent Lowest Responsible Bidder.

9. Subsequent to the bid opening, the Authority resolved to award the contract for construction of the Project to CCI, such that on or about June 21, 2000, the Authority issued a written construction contract (hereinafter "the Contract") in the amount of $1,887,422.95 to CCI, and the Contract was executed by both CCI and the Authority.

10. Also subsequent to the Bid Opening, on June 15, 2000, the Authority and the Engineer conducted a Pre-Construction Meeting with CCI to further discuss the scope and expected progress of the work called for in the Contract Documents, and CCI commenced the work called for in the Contract (the "Work").

11. Over the course of the construction of the Project, a multitude of disputes arising out of the Contract arose between CCI, the Authority, and the Engineer, which caused significant additional costs to CCI, as set forth in greater detail below.

12. In accordance with the Contract Documents, and at all times relevant hereto, the Engineer and its employees, have acted as the authorized agents and representatives of the Authority.

COUNT I: BREACH OF CONTRACT
(Failure to Issue Change Order: Change of Approved Manholes)

13. CCI realleges and incorporates by reference Paragraphs 1 through 12 of its Complaint as if fully set forth herein.

14. In accordance with the Contract Documents and prior to ordering the Manholes to be installed on the Project, on or about June 12, 2000, CCI submitted Shop Drawings to the Engineer for approval of the specific dimensions of the proposed Manholes, and to approve the proposed Manhole supplier, McGill Septic Tank Company.

15. On or about June 14, 2000, the Engineer approved the Shop Drawings and the proposed Manhole Supplier.

16. In reliance on the approvals provided by the Engineer, CCI immediately proceeded to order the approved Manholes, and to contract with the approved supplier.

17. Approximately two (2) weeks later, the Engineer notified CCI that it was withdrawing the approvals, and requested that CCI immediately re-submit Shop Drawings and a proposed supplier in accordance with the Engineer's changed interpretation of the Contract Specifications.

18. In accordance with the Engineer's order, on July 3, 2000, CCI immediately re-submitted Shop Drawings from a different Manhole supplier, namely Fi-Hoff, Inc., and requested that the Authority issue a Change Order to reimburse CCI for the additional costs incurred due to the Engineer's new interpretation of the Specifications.

19. On or about July 12, 2000, the Engineer approved the new Shop Drawings and the new supplier.

20. Due to the delay caused by the Engineer's change in interpretation of the Specifications, and the Engineer's delay in approving the new Shop Drawings and supplier, on July 12, 2000, CCI reiterated its request for a Change Order and requested a twenty-one (21) day extension of the Contract Time.

21. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to adjust the Contract sum or time.

22. The aforementioned change was beyond the scope of the Contract and required CCI to incur substantial additional cost and loss of Contract time.

23. Despite full and complete performance of this change by CCI, CCI is still owed additional compensation and an extension of the contract time.

24. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the Engineer's changed interpretation of the Specifications constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT II: BREACH OF CONTRACT
(Failure to Issue Change Order: Additional Erosion & Sedimentation Controls)

25. CCI realleges and incorporates by reference Paragraphs 1 through 24 of its Complaint as if fully set forth herein.

26. The Contract Documents included specifications requiring the Authority to obtain approval of an Erosion & Sedimentation ("E&S") Control Plan for the Clearfield County Conservation District, at Section 01010, Part 1.07(A)(4).

27. The Contract Documents included an E&S Control Plan under Appendix A.

28. With regard to Filter Fabric Fence, the E&S Control Plan indicated that:

> "Filter Fabric (silt) fence shall be installed where shown on the Contract Drawings or directed by Engineer and/or a Clearfield County Conservation District representative."

29. The Contract Drawings did not show any Filter Fabric Fence, and the Bid Form contained no bid item for Filter Fabric Fence.

30. However, during the course of the work, on or about September 20, 2000, a representative of the Clearfield County Conservation District, acting on behalf of the Pennsylvania Department of Environmental Protection ("DEP"), instructed CCI to install Filter Fabric Fence at a multitude of locations throughout the Project area.

31. On September 21, 2000, CCI related this instruction to the Engineer and requested a Change Order to compensate CCI for the installation of Filter Fabric Fence at the rate of $4.50 per Lineal Foot.

32. On October 2, 2000, CCI amended its request to include an extension of the Contract Time due to the additional work required by the installation of the Filter Fabric Fence.

33. With regard to the application of Mulch to disturbed areas, the E&S Control Plan in the Contract Documents indicated:

(a) "An estimated 3.25 acres shall be disturbed during the construction project.";

(b) "Any disturbed area on which activity has ceased and which will remain exposed for more than 20 days must be stabilized immediately. During non-germinating periods, mulch must be applied at the recommended rates.";

(c) "Apply Hay or Straw mulch at a rate of 3 tons per acre."; and

(d) "Permanent control measures (fertilizer, seed, lime and mulch) shall be placed over final graded areas within 10 days after completion of final grading."

34. As a further result of the instructions received from the Clearfield County Conservation District, the Engineer required CCI to apply mulch daily, and over approximately 25.92 acres, rather than over the estimated 3.25 acres and on a less frequent basis.

35. As a further consequence of the Clearfield County Conservation District and DEP's investigation of the Project and the E&S Control Plan, and in consideration for waiving

any penalties for previous violations, the DEP required the Authority to revise and re-design the E&S Control Plan, and to re-apply for the proper permits to continue construction of the Project.

36. On October 23, 2000, CCI requested a Change Order to compensate CCI for the additional costs for installation of an additional sixty-eight (68) tons of mulch at the price of $350.00 per ton, and an extension of contract time in the amount of twenty (20) days, resulting from the change in the required installation of mulch.

37. On or about November 8, 2000, the Engineer submitted the required revisions to the E&S Control plan that documented the changes to the Contract requiring significant installation of additional silt fence, clay dikes, stream crossings, and rock filter dams to the Project.

38. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to properly adjust the Contract sum or time as a result of the changes in the E&S Control Plan.

39. On or about January 15, 2001, the Engineer issued Change Order No. 7 to reimburse CCI at the rate of $2.50 per lineal foot for silt fence and $300.00 for each rock filter dam, and a one (1) day time extension per every 800 lineal feet of silt fence installed.

40. In correspondence dated February 22, 2001, attached to Change Order No. 7, CCI revised the Change Order and reserved the right to submit a claim for the originally submitted additional costs and time, and eventually, Change Order No. 7 as revised, was executed with CCI's written objections attached, on March 29, 2001.

41. The aforementioned change was beyond the scope of the Contract and required CCI to incur substantial additional cost and loss of Contract time.

42. Despite full and complete performance of this change by CCI, CCI is still owed additional compensation and an extension of the Contract time.

43. The Authority's failure and refusal to issue a Change Order properly adjusting the Contract sum and time, necessitated by the required changes to the E&S Control Plan, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT III: BREACH OF CONTRACT
(Failure to Issue Change Order: Authority's Failure to obtain proper Permit)

44. CCI realleges and incorporates by reference Paragraphs 1 through 43 of its Complaint as if fully set forth herein.

45. The Contract Documents included specifications requiring the Authority to obtain both the DEP's Water Quality Management (Part II) Permit for construction of the sanitary sewers, and the DEP's Bureau of Dams and Waterway Management General Permits for stream crossings, stream encroachment, or jurisdictional wetland encroachment, at Section 01010, Part 1.07(A)(1) and (2), respectively.

46. On or about September 25, 2000, a representative of the DEP inspected the Project and determined that the Authority had not obtained the proper permit to allow construction in the Simeling Run Watershed, Laurel Run Watershed, their tributaries and

wetlands ("Simeling and Laurel Run Watershed Areas") throughout the area of the Project, nor to allow for any stream crossings by construction equipment or for installation of sewer pipeline.

47. On or about October 2, 2000 the DEP representative again inspected the Project and indicated that CCI would be subject to fines and/or penalties if CCI did not cease all work within the Simeling Run and Laurel Run Watershed Areas during the three (3) month period of October 1, 2000 through January 1, 2001, and if CCI did not refrain from crossing any streams with construction equipment or sewer pipeline, or from working anywhere within 50 feet of the Simeling Run and Laurel Run Watershed Areas.

48. As a further consequence of the DEP's investigation, and in consideration for waiving any penalties for previous violations, the DEP revoked the GP-5 Permit and required the Authority to revise and re-design the E&S Control Plan prior to re-applying to obtain the proper permits to continue construction of the Project.

49. As a result of the threats of fines and/or penalties made by the DEP representative, and as a result of the DEP's requirement that the Authority re-design the E&S Control Plan and re-apply for the proper permits, on October 2, 2000, CCI requested a Change Order to extend the Contract Time by ninety-two (92) days, due to the fact that CCI was prohibited from working in certain critical areas of the Project, causing significant and drastic change to the as-bid and as-planned sequence and flow of work, and delaying ultimate completion of the Project.

50. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract time by a Written Amendment, a Change Order, or a Work Change Directive, the

Authority has failed and refused to adjust the Contract time as a result of CCI's efforts to comply with the requirements of the DEP and to avoid fines and/or penalties.

51. The aforementioned orders from the DEP changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

52. Despite CCI's compliance with the DEP's requirements, CCI is still owed additional compensation and an extension of the contract time.

53. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the requirements of the DEP, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT IV: BREACH OF CONTRACT
(Failure to Issue Change Order: Unforeseen and Differing Site Conditions)

54. CCI realleges and incorporates by reference Paragraphs 1 through 53 of its Complaint as if fully set forth herein.

55. The Contract Documents included a set of construction drawings and plans (hereinafter collectively referred to as "the Plans") which pictured both the installation of the work called for in the Specifications, as well as the existing conditions throughout the area where the Project was to be performed (hereinafter referred to as "the Site").

56. The Plans depicted the Physical Condition of the Site, the Subsurface Conditions, and the locations of existing Underground Facilities, including the locations of various existing underground facilities.

57. Prior to submitting its bid, representatives of CCI made their own reasonable investigation of the Site, and carefully examined the Plans, and in reliance on these investigations, submitted CCI's bid proposal.

58. During the course of its work, CCI discovered that the Plans were inaccurate and grossly misrepresented the character of the work, as the actual Physical Conditions, Subsurface Conditions and locations of Underground Facilities were in large part, incorrect, unmarked, unspecified, omitted, and/or inaccurate.

59. More specifically, the Physical Conditions were inaccurate as follows:

a. The Plans failed to depict the existence of various man-made items, equipment, and obstructions to the installation of the work;

b. The Plans failed to depict the existence of wetlands between Manholes AE-3 and AE-4, AE-13 and AE-14, AE-14 and AE-15, and AE-17 and AE-18; and

c. The Plans failed to depict the existence, proximity and condition of salvage items blocking the path of construction from Manholes S-9 to T-1, S-9 to S-10, T-1 to U-1, and T-1 to T-2.

60. More specifically, the Subsurface Conditions were inaccurate as follows:

a. The Plans failed to depict the existence of a ten (10) inch thick slab of concrete immediately beneath the roadway of State Route 2024;

b. The Plans failed to depict the existence of a slab of concrete immediately beneath the roadway of Laurel Run and Arc Road;

c. The Plans failed to depict the existence of brick, concrete, ash pits, and sand pits, between Manholes A-4 and A-5, AE-2 through A-3, and A-3 through A-5;

d. The Plans failed to depict the existence of an unmarked Building Foundation between Manholed AE-1 and AF-1;

e. The Plans failed to depict the existence of an unsuitable trench bottom at Manholes A-32; and

f. The Plans failed to depict the existence, proximity and condition of existing waterline constructed of asbestos material known as transite;

61. More specifically, the Locations of Underground Facilities were inaccurate as follows:

a. The Plans failed to depict the existence of, or accurate subsurface location of existing water lines;

b. The Plans failed to depict the existence of, or accurate subsurface location of existing sewer lines;

c. The Plans failed to depict the existence of, or accurate subsurface location of existing gas lines; and

d. The Plans failed to depict the existence of, or accurate subsurface location of existing telecommunication lines.

62. Because these Conditions and Locations were not accurately depicted, or entirely omitted from the Contract Documents, the character of the Project was significantly changed, as CCI was significantly delayed in the progress of its work, was forced to employ extraordinary measures to circumvent such Conditions, and was forced to incur substantial additional costs not anticipated or reasonably foreseen at the time of bid, to complete the Project.

63. Each time CCI encountered changes and additional work resulting from these Differing Conditions, CCI provided written notice to the Authority and/or the Engineer, and requested that the Contract Price and Time be equitably adjusted.

64. With regard to Changes in the Work, and Differing Conditions, the Contract Documents provided that:

a. The Authority may adjust the Contract price and time by a Written Amendment, a Change Order, or a Work Change Directive, according to Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims"); and

b. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of differing subsurface or physical conditions cause an increase in the Contractor's cost and/or time for performance of the Work, according to Article 4 of the General Conditions of the Contract Documents (entitled "Availability of Lands; Subsurface and Physical Conditions; Reference Points").

65. Despite the existence of the Contract provisions cited in the previous paragraph, the Authority has failed and refused to adjust the Contract price or time as a result of the changes in the Work, or the additional cost and time necessary to circumvent the differing conditions.

66. With regard to Underground Facilities, the Pennsylvania Underground Utility Line Protection Act, 73 P.S. §176, et seq., provides that:

a. Facility Owners shall be members of a One Call System (73 P.S. §177(1));

b. Facility Owners shall, within 2 working days of a One Call request, mark, stake, locate or otherwise provide the position of their underground facilities within 18 inches from the outside wall of the facility, so that a contractor may locate the precise position of the facility (73 P.S. §177(5));

c. Engineers shall request line and facility information prior to the time a final design is completed (73 P.S. §179(2));

d. Engineers shall show the position and type of underground facilities upon their design drawings (73 P.S. §179(3));

e. Engineers shall make reasonable effort to prepare design drawings to avoid damage and minimize interference with underground facilities (73 P.S. §179(4)); and

f. If Contractors comply with the Underground Utility Line Protection Act and are not negligent, they shall incur no obligation to facility owners, operators, owners or other persons (73 P.S. §180(12)).

67. Despite the terms of the Underground Utility Line Protection Act, certain Facility Owners in the Project Area were not members of a One Call System, and/or did not mark, stake, locate or otherwise provide the position of their underground facilities.

68. Despite the terms of the Underground Utility Line Protection Act, the Engineer did not show the position and type of underground facilities in the Contract Documents, failed to exercise reasonable care to otherwise determine the position and type of underground facilities in the Project area, and failed to make a reasonable effort to prepare the design drawings to avoid damage and minimize interference with underground facilities.

69. Despite the terms of the Underground Utility Line Protection Act, CCI incurred a multitude of obligations to Facility Owners and the Authority, and was directed and required to repair and relocate underground facilities without reimbursement.

70. Upon encountering an unmarked or mismarked underground facility, CCI notified the Engineer and the Authority and requested adjustment to the Contract sum and time.

71. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the changes in the Work and the differing conditions, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT V: BREACH OF CONTRACT
(Failure to Issue Change Order: Constructive Fraud)

72. CCI realleges and incorporates by reference Paragraphs 1 through 71 of its Complaint as if fully set forth herein.

73. The Contract Documents included a set of construction drawings and plans (hereinafter collectively referred to as "the Plans") which pictured both the installation of the work called for in the Specifications, as well as the existing conditions throughout the area where the Project was to be performed (hereinafter referred to as "the Site").

74. The Plans and Specifications constituted a positive and material representation by the Authority as to the conditions relative to the Work to be performed pursuant to the Contract.

75. Prior to submitting its bid, representatives of CCI made their own reasonable investigation of the Site, and carefully examined the Plans, but due to time and cost restraints, CCI had no reasonable means to conduct the kind of thorough and independent investigation of the conditions performed by the Authority and Engineer, and reasonably relied on the representations of the Authority and Engineer.

76. However, during the course of the Work, CCI discovered that the Plans were false, misleading, inaccurate and grossly misrepresented the character of the work, as the actual Physical Conditions, Subsurface Conditions and locations of Underground Facilities were in large part, incorrect, unmarked, unspecified, omitted, and/or inaccurate.

77. As a direct result of the false, misleading, and inaccurate Plans and Specifications, the character of the Project was significantly changed, and CCI was significantly delayed in the progress of its work, was forced to employ extraordinary measures to circumvent such Conditions, and was forced to incur substantial additional costs not anticipated or reasonably foreseen at the time of bid, to complete the Project.

78. Each time CCI encountered changes and additional work resulting from these Differing Conditions, CCI provided written notice to the Authority and/or the Engineer, and requested that the Contract Price and Time be equitably adjusted.

79. With regard to Changes in the Work, and Differing Conditions, the Contract Documents provided that:

a. The Authority may adjust the Contract price and time by a Written Amendment, a Change Order, or a Work Change Directive, according to Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims"); and

b. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of differing subsurface or physical conditions cause an increase in the Contractor's cost and/or time for performance of the Work, according to Article 4 of the General Conditions of the Contract Documents (entitled "Availability of Lands; Subsurface and Physical Conditions; Reference Points").

80. Despite the existence of the Contract provisions cited in the previous paragraph, the Authority has failed and refused to adjust the Contract price or time as a result of the changes in the Work, or the additional cost and time necessary to circumvent the differing conditions.

81. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the false, misleading, and inaccurate Plans and Specifications, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT VI: BREACH OF CONTRACT

(Failure to Issue Change Order: PennDOT Storm Sewer Relocation and Installation)

82. CCI realleges and incorporates by reference Paragraphs 1 through 81 of its Complaint as if fully set forth herein.

83. On or about January 16, 2001, it was discovered that the Plans failed to accurately depict the location of an existing storm sewer on Clearfield Street, beyond Manhole A-51.

84. Due to this error in the Plans, the Pennsylvania Department of Transportation ("PennDOT") indicated to CCI that the Authority was required to relocate and replace approximately Four Hundred and Fifty (450) Lineal Feet of storm sewer and catch basins, and CCI notified the Authority and Engineer that this additional work would require a Change Order compensating CCI for the cost of the materials and extending the Contract Time.

85. More specifically, on January 16, 2001, CCI requested a Change Order reflecting an increase in the Contract Sum in the amount of $25.00 per Lineal Foot of pipe, $300.00 per catch basin for labor to install, and a five (5) day extension to the Contract Time.

86. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the changes initiated by PennDOT.

87. The aforementioned changes initiated by PennDOT changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

88. Despite CCI's compliance with the changes initiated by PennDOT and approved by the Authority, CCI is still owed additional compensation and an extension of the contract time.

89. Although the Authority ultimately issued Change Order No. 9, the Change Order failed to properly compensate CCI or to properly extend the Contract time.

90. The Authority's failure and refusal to issue a proper Change Order adjusting the Contract sum and time, necessitated by the changes initiated by PennDOT and approved by the Authority, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT VII: BREACH OF CONTRACT
(Failure to Issue Change Order: Relocation of Manholes A21 through A28)

91. CCI realleges and incorporates by reference Paragraphs 1 through 89 of its Complaint as if fully set forth herein.

92. On or about October 30, 2000, the Authority directed CCI to relocate a segment of sewerline running between Manholes A21 through A28, and issued "Work Directive No. 1," reflecting this change.

93. In response to Work Directive No. 1, CCI notified the Authority and Engineer that this change would require additional work and would require a Change Order compensating CCI for the additional work and extending the Contract Time.

94. More specifically, CCI requested a Change Order reflecting an increase in the Contract Sum and extension to the Contract Time to provide additional temporary mulch stabilization, additional clearing and grubbing, additional surveying, and other work associated with the change.

95. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive,

the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the relocation of the sewerline running between Manholes A21 and A28.

96. The aforementioned relocation changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

97. Despite CCI's compliance with the relocation request, CCI is still owed a Change Order reflecting the additional compensation and extension of the Contract Time.

98. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the relocation of the sewerline running between Manholes A21 and A28, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT VIII: BREACH OF CONTRACT
(Failure to Issue Change Order: Removal of Stockpiled Fill)

99. CCI realleges and incorporates by reference Paragraphs 1 through 98 of its Complaint as if fully set forth herein.

100. The Contract Documents included specifications requiring CCI to stockpile and maintain Five Hundred (500) Cubic Yards of excavated material for use as backfill material, according to Section 02225(2.03)(A)(1).

101. Upon information and belief it is averred that the Authority and/or the Engineer authorized another contractor to remove significant quantities of material from CCI's stockpile,

such that by December, 2000, CCI was required to supply additional material for installation as backfill to the stockpile.

102. On or about December 21, 2000, CCI requested additional compensation for the unauthorized removal of CCI's stockpiled material.

103. Despite the fact that Section 02225(2.03)(A)(2) of the Contract Documents provides that the Authority will provide a Change Order to compensate the Contractor for additional amounts of stockpiled material, the Authority has failed and refused to issue a Change Order to compensate CCI for the additional stockpiled material.

104. The aforementioned supply of additional stockpiled material changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional cost and loss of Contract time.

105. Despite CCI's compliance with Section 02225 of the Contract Documents, CCI is still owed additional compensation and an extension of the Contract Time.

106. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by Section 02225(2.03)(A)(2) of the Contract Documents, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT IX: BREACH OF CONTRACT
(Failure to Issue Change Order: Roadway Repairs)

107. CCI realleges and incorporates by reference Paragraphs 1 through 106 of its Complaint as if fully set forth herein.

108. On or about February 13, 2001, the Authority by and through the Engineer, directed CCI to perform remedial work to certain roadway areas throughout the Site that were failing due to the Engineer's defective design and failure to account for the conditions caused by the freeze and thaw cycle at this time of year, and failure to account for pre-existing conditions.

109. In response to the request to perform remedial work to the roadways, CCI notified the Authority and Engineer that this change would require additional work and would require a Change Order compensating CCI for the additional work and extending the Contract Time.

110. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the required remedial work to the roadways.

111. The aforementioned remedial work changed both the sequence and the scope of the work called for by the Contract and would require CCI to incur substantial additional costs and additional Contract time.

112. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the required remedial work, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT X: BREACH OF CONTRACT
(Failure to Issue Change Order: Elimination of Dumpsite)

113. CCI realleges and incorporates by reference Paragraphs 1 through 112 of its Complaint as if fully set forth herein.

114. During the Mandatory Pre-Bid Conference, the Engineer and Authority notified prospective bidders, including CCI, that 2 dumpsites would be made available to the Contractor, within the Site, to dispose of excess material removed during the course of construction.

115. Based on this notification, CCI did not account for additional costs associated with trucking excess material out of the Site area and disposing of such material.

116. However, after the Contract was awarded to CCI and executed, the Authority arbitrarily eliminated one of the dumpsites designated during the Mandatory Pre-Bid Conference available to CCI.

117. Because this dumpsite was eliminated, CCI incurred substantial additional costs and incurred substantial additional time in trucking excess material out of the Project area and back to the remaining dumpsite.

118. CCI notified the Engineer and Authority of the need for a Change Order to adjust the Contract sum and time, but the Authority refused to provide the same.

119. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of its decision to eliminate a dumpsite.

120. The decision to eliminate a dumpsite changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional costs and additional Contract time.

121. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the additional trucking, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XI: BREACH OF CONTRACT
(Failure to Issue Change Order: Material and Significant Quantity Differences)

122. CCI realleges and incorporates by reference Paragraphs 1 through 121 of its Complaint as if fully set forth herein.

123. Throughout the course of the work, CCI discovered that the estimated quantities on Bid Items supplied in the Contract Documents were significantly inaccurate.

124. In fact, it became apparent that the quantities estimated for Bid Item Nos. 2.E (8" Sewer 12-14' deep), 2.F (8" Sewer 14-16' deep), 4.B (6" Force Main), 5.D (Manhole Drop Connections), 7.A (4" Sewer Laterals), 7.B (6" Sewer Laterals), 11.A (5" BCBC Pavement Replacement), 13 (Concrete Sidewalk/Driveway Replacement), 18 (Stream Crossings), and 20 (Concrete Encasement), were underestimated by as much as 260%, but in each case by more than 15%.

125. During the Pre-Construction Conference, the Authority and Engineer agreed that actual quantity differences of 15% or more would be material and significant, such that new unit prices would be appropriate.

126. Upon discovering these significant quantity differences, CCI notified the Authority and Engineer that these changes would require adjustment to the as-bid unit prices, and reasonable extension of the Contract Time.

127. More specifically, on May 9, 2001, CCI requested a Change Order primarily based on Article 11 of the General Conditions of the Contract Documents which provides for adjustment to the Contract price if "the quantity of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement."

128. Despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, and despite the fact that Article 11 of the General Conditions specifically addresses errors in the estimated quantities, the Authority has failed and refused to issue a proper Change Order to adjust the Contract Sum and Time on account of the material and significant changes in estimated quantities.

129. The aforementioned material and significant changes in the estimated quantities changed both the sequence and the scope of the work called for by the Contract and required CCI to incur substantial additional costs and additional Contract time.

130. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by the material and significant changes in estimated quantities, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XII: BREACH OF CONTRACT
(Failure to Issue Change Order: Delay Damages and Loss of Production Costs)

131. The averments set forth in Paragraphs 1 through 130 are incorporated herein by reference as if set forth in full.

132. In submitting its Bid Proposal, and in reliance on the representations made in the Contract Documents and at the Mandatory Pre-Bid Conference, CCI reasonably expected to perform the Work in a logical, productive and sequential manner in accordance with its As-Planned schedule.

133. Furthermore, the Contract Documents impliedly warranted that the Work could be performed in accordance with the Contract Documents, without delay, interference or disruption from the Authority or the Engineer, and in reasonable cooperation with the Authority and Engineer, such that the Work could be substantially completed within 180 days, and finally completed within 240 days of Notice to Proceed, as set forth at Article 3 of the Contract Agreement.

134. Throughout the course of the Work, CCI's performance was continuously delayed, disrupted and interfered with by the Authority and its agent, the Engineer, generally and in the following particulars:

a. Failure to accurately depict or describe the locations of underground utilities throughout the Site;

b. Failure to accurately depict or describe subsurface conditions throughout the Site;

c. Failure to accurately depict or describe physical conditions throughout the Site;

d. Failure to remove man-made and artificial obstructions throughout the Site;

e. Failure to obtain construction right-of-ways, highway occupancy permits, and easements per General Conditions Section 4.01.A in a timely-fashion;

f. Failure to provide reasonably prompt responses to the differing conditions throughout the Site;

g. Failure to provide reasonably prompt responses to CCI's requests for Change Orders for extra work and extensions of Contract Time;

h. Failure to obtain the proper permits to allow CCI to proceed with the Work, prior to issuing Notice to Proceed;

i. Failure to obtain the proper permits in a reasonably prompt manner to allow CCI to proceed with its work after notification that the acquired permits were inadequate;

j. Failure to provide reasonably prompt review of submittals required when the Engineer changed its interpretation of approved manholes as set forth in Count I, above;

k. Failure to provide reasonably prompt information relating to the relocation of segments of sewerline, including but not limited to the relocation of Manholes AG-1 through AE-3;

l. Failure to provide reasonably prompt approval of proposed Subcontractors;

m. Failure to extend the Contract Time as a result of the additional work required by PennDOT, respectively, above;

n. Failure to extend the Contract Time as a result of the additional work required to install the sewerline through and under the various differing subsurface conditions described in Count IV, above;

o. Failure to extend the Contract Time as a result of the additional work required by the E&S Control Changes described in Count II, above;

p. Failure to extend the Contract Time as a result of the additional work associated with finding, repairing, and relocating the unmarked and/or mismarked underground utilities throughout the Site;

q. Failure to extend the Contract Time as a result of CCI's encounter with Transite pipe containing hazardous asbestos material;

r. Failure to extend the Contract Time as a result of the Authority's delay in selecting and approving grinder pumps;

s. Failure to extend the Contract Time as a result of adding additional wye connections, not shown on the Plans;

t. Failure to delineate and provide an on-Site dumpsite;

u. Failure to extend the Contract Time to provide for a "winter shutdown" period;

v. Prohibiting CCI from communicating with the Engineer orally, and requiring all communication to be in writing; and

w. Failure to otherwise cooperate with CCI to ensure the timely and reasonably orderly performance of the Work.

135. As a consequence of the unexpected addition of work, conditions differing significantly from the Contract Documents, and the other various failures as averred in the previous paragraph, the Authority forced CCI to resequence and reschedule its performance and to perform construction activities throughout the winter months, while interfering with and preventing CCI's ability to construct the Work as-planned in a sequential, orderly and continuous manner.

136. Throughout the course of the Work, CCI continuously and repeatedly notified the Authority and its Engineer of the delays and disruptions averred above.

137. Despite proper and repeated notice, and despite the fact that Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may equitably adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, the Authority has failed and refused to adjust the Contract Sum and Time for delays attributable to the Authority.

138. The aforementioned delays and disruptions changed not only the sequence and the scope of the work called for by the Contract, but significantly extended the actual performance of the Work, and directly and proximately caused CCI to lose productivity, to incur additional job site and home office overhead, to incur extended equipment rental, fuel, and maintenance costs, to reduce CCI's bonding capacity, and to prevent CCI from obtaining additional work.

139. The Authority's failure and refusal to issue a Change Order adjusting the Contract sum and time, necessitated by its delays and disruptions to the Work, constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XIII: BREACH OF CONTRACT
(Misrepresentation)

140. CCI realleges and incorporates by reference Paragraphs 1 through 139 of its Complaint as if fully set forth herein.

141. In preparing the Contract Documents and soliciting bids based upon the same, the Authority had a duty to disclose all relevant information within its possession to bidders, including CCI, which would impact the performance of the Work.

142. Prior to the execution of the Contract, the Authority, through its acts, omissions, conduct, words and assertions as chiefly set forth in the Contract Documents and in the Mandatory Pre-Bid Conference, negligently, recklessly, and/or knowingly and intentionally concealed material facts concerning the Work from the bidders, including CCI.

143. Specifically, the Authority withheld its superior knowledge and failed to disclose:

a. The incomplete status of the easements and right-of-ways necessary for performance of the Work;

b. The location and presence of the concrete under State Route 2024;

c. The location and presence of the concrete under Laurel Run and Arc Road;

d. The location and presence of the brick, concrete, ash and sand pits associated with an abandoned subsurface brickyard;

e. The location and presence of subsurface and abandoned concrete foundations;

f. The location and presence of protected wetlands in the Site;

g. The inadequate status of the permits required for performance of the Work;

h. The existence of a protected wild trout stream and watershed area, namely Simeling Run and Laurel Run Watershed Areas, through the Site;

i. The inadequate status of the E&S Control Plan included in the Contract Documents;

j. The lack of 2 dumpsites;

k. The various aspects of the Work which were required to be changed due to PennDOT requirements, including relocation of storm and sanitary sewerline, and additional work associated with PennDOT paving requirements;

l. The inaccurate and/or omitted depiction of underground utilities throughout the Site; and

m. The necessity for PennDOT approved manholes as averred above, in Count I.

144. CCI had no knowledge that the Authority would fail to disclose the material facts averred in the preceding paragraph, and instead, reasonably relied upon the representations made by the Authority in preparing its Bid Proposal and executing the Contract at its Bid price.

145. The Authority knew or should have known that the misrepresentation of the various material facts averred above would be relied upon by bidders, including CCI, in formulating Bid Proposals, and that such misrepresentation would result in grossly inaccurate Bid Proposals.

146. CCI reasonably relied to its detriment upon the misrepresentation of the material facts associated with the Work as contained in the Contract Documents and the Mandatory Pre-Bid Conference.

147. As a direct and proximate consequence of the misrepresentations and omissions made by the Authority, and the Authority's failure to disclose its superior knowledge, CCI suffered significant damages in the form of additional costs, additional and lost labor productivity, and extended jobsite and home office overhead.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XIV: BREACH OF CONTRACT
(Contract Recission: Cardinal Change)

148. The averments set forth in Paragraphs 1 through 147 are incorporated herein by reference as if set forth in full.

149. Due to the defective nature of the Contract Documents, and the materially different conditions encountered by CCI during the course of the Work, the actual character of CCI's scope of work and method and manner of performance (the "As-Built Scope of Work") was drastically altered from that contemplated by the as-bid Contract Documents.

150. Throughout the course of the Work, CCI continuously and repeatedly notified the Authority of the multitude of changes and the nature of the As-Built Scope of Work; nonetheless, the Authority compelled CCI to continue performance despite its knowledge of the drastically changed As-Built Scope of Work.

151. As a result of the Authority's decision to compel performance of the As-Built Scope of Work, without adequate compensation or reasonable time extension, the Authority materially breached the Contract entitling CCI to contract rescission, and payment on the basis of restitutional recovery of CCI's actual costs in labor and materials, with reasonable overhead and profit.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XV: QUANTUM MERUIT

152. CCI realleges and incorporates by reference Paragraphs 1 through 151 of its Complaint as if fully set forth herein.

153. At the request of the Authority, and on the Authority's express promise to pay the reasonable value thereof (based on Article 10 of the General Conditions to the Contract), CCI rendered certain construction services, performed labor and furnished materials and equipment required for the installation of approximately 48,570 Lineal Feet of 6 Inch diameter and 8 Inch

diameter gravity sewer main pipeline, approximately 2,660 Lineal Feet of 6 Inch diameter force main sewer pipeline, 6,400 Lineal Feet of sewer laterals, and related appurtenances, in the Borough of Wallaceton, and Township of Boggs, in Clearfield, Pennsylvania.

154. As a result of CCI's performance of the services discussed in the preceding paragraph and the acceptance thereof by the Authority, the Authority received the benefit of services and materials having a fair and reasonable value far in excess of CCI's Bid Proposal.

155. Despite repeated demands, the Authority has failed and refused to compensate CCI for the full, fair and reasonable value of the benefit it received, and has been unjustly enriched at the expense of CCI.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XVI: BREACH OF CONTRACT
(Failure to Issue Change Order: Contract Time Extension)

156. The averments set forth in Paragraphs 1 through 155 are incorporated herein by reference as if set forth in full.

157. Article 10 of the General Conditions of the Contract Documents (entitled "Changes in the Work; Claims") provides that the Authority may adjust the Contract sum and time by a Written Amendment, a Change Order, or a Work Change Directive, for additional or changed work or delays beyond the Contractor's control.

158. As set forth in the preceding Counts hereof, CCI encountered a multitude of delays, changes, and extra work beyond CCI's control, and continuously and repeatedly requested that the Authority extend the Contract Time.

159. However, the Authority has unreasonably refused to extend the Contract Time.

160. The Authority's failure to provide a reasonable time extension constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XVII: BREACH OF CONTRACT
(Improper Assessment of Liquidated Damages)

161. The averments set forth in Paragraphs 1 through 160 above are incorporated herein by reference as if set forth in full.

162. The Contract Documents required CCI to obtain Substantial Completion of the Work within 180 days of the Notice to Proceed, and Final Completion of the Work within 240 days of Notice to Proceed, subject to equitable adjustment in the Contract Time pursuant to Article 10 of the General Conditions of the Contract Documents.

163. Despite a multitude of repeated and continuous requests to extend the Contract Time in a reasonable fashion, and to provide a winter shutdown as promised during the Mandatory Pre-Bid Conference, the Authority failed and refused to do so, in material Breach of the Contract.

164. Regardless, CCI made extraordinary efforts to perform the Work and complete the Project expeditiously.

165. Throughout the course of its performance, CCI has applied for payments on a monthly basis, in accordance with Article 5 of the Contract, and Article 14 of the General Conditions of the Contract Documents.

166. Article 3 of the Contract provides that the Authority may assess Liquidated Damages in the amount of $800.00 per day for each day that CCI failed to achieve Substantial Completion beyond the Substantial Completion deadline, and provides that the Authority may collect Liquidated Damages in the amount of $700.00 per day for each day that CCI failed to achieve final completion beyond the Final Completion deadline.

167. Based on information received, it is believed, and therefore averred that the Authority has proceeded to assess liquidated damages of $800.00 per day, beginning December 19, 2000, and asserted its right to assess an additional $700.00 per day, beginning on February 14, 2001, despite the Authority's failure and refusal to provide a reasonable extension of the Contract Time.

168. The Authority's failure and refusal to reasonably extend the Contract Time constitutes a material Breach of Contract which voids any claim for Liquidated Damages.

169. Additionally, the Authority has breached the Contract by electing to assess a total of $1500.00 per day, beginning on February 14, 2001, despite the clear language of the Contract which, even if enforceable, permits Liquidated Damages of only $800.00 per day during the period occurring after the Substantial Completion deadline, and of only $700.00 per day, for each day after an 60 day period permitted to achieve Final Completion.

170. Furthermore, Article 3 of the Contract is void as a matter of law, as the Liquidated Damages provided for therein clearly constitute a penalty bearing no relation to any actual damages suffered by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XVIII: BREACH OF CONTRACT
(Failure to Release Retention)

171. The averments set forth in Paragraphs 1 through 170 above are incorporated herein by reference as if set forth in full.

172. On or about April 23, 2001, the Engineer certified that the Work was Substantially Complete as of "4/18/00," which upon information and belief was to signify that the Work was Substantially Complete as of April 18, 2001.

173. Subsequently, CCI executed a Certificate of Substantial Completion noting that it did not waive its right to contest the date established for Substantial Completion by the Engineer.

174. On or about April 23, 2001, in conjunction with issuing the Certificate of Substantial Completion and pursuant to Article 5.2 of the Contract, the Engineer certified each and every uncompleted item of work with a reasonable cost of completion.

175. Prior to Substantial Completion, with the Engineer's recommendation, the Authority was authorized to withhold 10% of the value of Work completed, until 50% of the Work was completed, at which time the Authority could withhold no more than 5% of the value of the Work completed, pursuant to Article 5.2.1 of the Contract.

176. After Substantial Completion, the Authority was not authorized to withhold any more than 1.5 times the amount of each and every uncompleted item of work, as certified by the Engineer, pursuant to Article 5.2 of the Contract.

177. Since the Engineer certified each and every uncompleted item of work on April 23, 2001, CCI has performed and completed each and every item set forth in the Engineer's certification of April 23, 2001.

178. Despite repeated requests, the Authority has refused to release any further retention and has indicated that it will arbitrarily continue to withhold 10% of the value of the Work, despite clear language in the Contract to the contrary.

179. The Authority's failure and refusal to make payment in accordance with the terms of the Contract, and arbitrary withholding of 10% retention constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XIX: BREACH OF CONTRACT
(Failure to Conduct Final Inspection)

180. The averments set forth in Paragraphs 1 through 179 above are incorporated herein by reference as if set forth in full.

181. Upon completing the Work in full, CCI provided repeated written requests to the Engineer to conduct a Final Inspection of the Work, in accordance with Article 14.06 of the General Conditions to the Contract Documents (entitled, "Final Inspection").

182. Despite CCI's repeated requests, the Engineer and Authority have refused to conduct a Final Inspection, but instead have continued to delay and extend the close-out of the Project.

183. The Authority's failure and refusal to conduct a Final Inspection constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XX: BREACH OF CONTRACT
(Failure to Properly Process Payment Applications)

184. The averments set forth in Paragraphs 1 through 183 above are incorporated herein by reference as if set forth in full.

185. Throughout the course of its performance, CCI has applied for payments on a monthly basis, in accordance with Article 5 of the Contract, and Article 14 of the General Conditions of the Contract Documents.

186. Despite CCI's timely application for payment, the Authority has failed and refused to make payment in full, has arbitrarily reduced and modified CCI's pay applications, and continues to withhold both the balance of payment for work completed and excessive retention.

187. The Authority's failure and refusal to make payment in full, arbitrary reduction and modification of pay applications, and withholding of both the balance of payment for work completed and excessive retention constitutes a material Breach of Contract by the Authority.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE
(Statutory Interest)

188. The averments set forth in Paragraphs 1 through 187 above are incorporated herein by reference as if set forth in full.

189. The Authority is a "Governmental Agency" as that term is defined in Part II of the Commonwealth Procurement Code, 62 Pa. C.S.A. §3102.

190. As a Governmental Agency, the Authority is bound by the provisions of Part II, Chapter 39, "Contracts for Public Works." 62 Pa. C.S.A. §§3901-3942.

191. The Commonwealth Procurement Code provides, in relevant part, the following:

a. A Governmental Agency shall pay a contractor strictly in accordance with the contract (Section 3932(a));

b. If any progress payment is not made when due, the Governmental Agency must pay interest on the amount due, computed at the rate determined by the Secretary of Revenue for interest payments on overdue taxes or the refund of taxes (Section 3932(c)); and

c. If final payment is not made when due, the Governmental Agency must pay interest on the amount due, at the rate of 10% per annum, or is the agency has issued bonds to finance the project, then at the rate of the bond issue, whichever is less, but in no event less than the legal rate of interest (Section 3941(b)).

192. As alleged above, the Authority has failed and refused to pay CCI in strict accordance with the Contract, has failed to make payment of progress payments when due, and has failed to make final payment when due.

193. Because the Authority has failed to pay in accordance with the terms of the Commonwealth Procurement Code, CCI is entitled to statutory interest.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE

(Penalty, Attorney Fees and Expenses)

194. The averments set forth in Paragraphs 1 through 193 above are incorporated herein by reference as if set forth in full.

195. The Authority is a "Governmental Agency" as that term is defined in Part II of the Commonwealth Procurement Code, 62 Pa. C.S.A. §3102.

196. As a Governmental Agency, the Authority is bound by the provisions of Part II, Chapter 39, "Contracts for Public Works." 62 Pa. C.S.A. §§3901-3942.

197. The Commonwealth Procurement Code provides, in relevant part, the following:

a. If a Governmental Agency fails to properly pay a contractor, the contractor is entitled to a penalty equal to 1% per month of the amount that was withheld in bad faith (Section 3935(a)); and

b. If it is determined that the Governmental Agency acted in bad faith, the contractor may be awarded a reasonable attorney fee together with expenses (Section 3935(b)).

198. At all times throughout the performance of the Work, the Authority has exhibited bad faith towards CCI generally, and in the following particulars:

a. In arbitrarily withholding payment from CCI;

b. In vexatiously withholding payment from CCI;

c. In disregarding the recommendations of the Engineer to make payment;

d. In intentionally withholding and failing to disclose information including the incomplete status of the easements and right-of-ways necessary for performance of the Work, the location and presence of the concrete under State Route 2024, the location and presence of the concrete under Laurel Run and Arc Road, the location and presence of the brick, concrete, ash and sand pits associated with an abandoned subsurface brickyard, the location and presence of subsurface and abandoned concrete foundations; and the location and presence of protected wetlands in the Site;

e. In interpreting the requirements of the specifications in an unreasonable and oppressive manner;

f. In failing to obtain the proper easements, right-of-ways, and permits prior to issuing Notice to Proceed and commencing the Contract Time, and in failing to obtain the same promptly during the course of the Work and in a manner not to interfere with the sequence and performance of the Work;

g. In failing to provide 2 dumpsite;

h. In directing CCI to perform various aspects of work required by PennDOT without providing compensation;

i. In failing to accurately depict or locate the underground utilities throughout the Site;

j. In failing to provide a "winter shutdown" as promised during the Mandatory Pre-Bid Conference, and

k. In discriminating against CCI on the basis of sex, as alleged in greater detail below.

199. Because the Authority has withheld payment to CCI in bad faith, arbitrarily and vexatiously, CCI is entitled to penalty, reasonable attorney fees and expenses.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

COUNT XXII: CIVIL RIGHTS ACTION
(Equal Protection Clause/Sex Discrimination)

200. The averments set forth in Paragraphs 1 through 199 above are incorporated herein by reference as if set forth in full.

201. This Count is brought pursuant to Title 42 of the United States Code, Section 1983.

202. Continental Construction, Inc., is a "person" entitled to the protections of the Fourteenth Amendment to the United States Constitution.

203. CCI has been a Woman-owned Business Enterprise ("WBE") since 1995, and has been certified as such by the Pennsylvania Department of Transportation and Department of General Services.

204. Throughout the course of its dealings with CCI, the Authority and its male agents while acting within the scope of their authority, under color of law, and as a matter of Authority policy and/or custom, consistently, willfully and purposefully discriminated against CCI with malice, on the basis of sex, in that:

a. CCI was treated differently than the other contractor, a non-WBE, performing work for the Authority at the same time and at the same Site, as the other contractor was determined to be Substantially Complete prior to its work being fit for its intended use, as the other contractor was provided a "winter shutdown," as the other contractor was permitted to use alternate materials, as the other contractor's subcontractors were approved without delay, and as the other contractor was permitted to communicate with the Engineer orally;

b. The Engineer refused to communicate with the female-owner of CCI, other than in writing, and directed the female-owner of CCI to put all communications in writing;

c. The Authority and its male agents issued oral comments indicating a general disrespect for women, and especially women involved in the construction industry;

d. The Authority and its male agents issued oral comments reflecting doubt that CCI could perform the scope of work set forth in the Contract due to the fact that its Owner is female;

e. The Authority and its male agents attempted to intimidate and "bully" the female owner of CCI; and

f. In corresponding with CCI in writing, the Authority and its male agents repeatedly referred to the female owner of CCI as "MS Marzella."

205. As a person entitled to the protections of the Fourteenth Amendment to the United States Constitution, CCI is entitled to equal protection and treatment from governmental or municipal agencies, including the Authority.

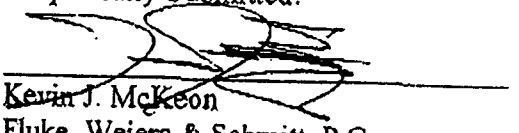
206. Because the Authority failed to treat CCI equally, and as otherwise alleged above, CCI's performance of Work was delayed, disrupted, and CCI was forced to work out-of-sequence, without the cooperation of the Authority or Engineer, all of which caused CCI to incur additional costs and damages as set forth throughout this Complaint.

207. Because the Authority failed to treat CCI equally, and as otherwise alleged above, the Authority has violated the equal protection clause of the Fourteenth Amendment to the United States Constitution, and is therefore liable pursuant to 42 U.S.C. §1983.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against the Wallaceton-Boggs Municipal Authority for an amount in excess of the statutory limit for compulsory arbitration, plus punitive damages, reasonable attorney fees, and costs of this suit.

A JURY TRIAL IS DEMANDED.

Respectfully Submitted:



Kevin J. McKeon
Fluke, Weiers & Schmitt, P.C.
1400 The Bank Tower
Pittsburgh, PA 15222
Attorney for the Plaintiff

VERIFICATION

I, Julee Marzella, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. These statements are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc., Plaintiff, v. Wallaceton-Boggs Municipal Authority, Defendant, v. Sweetland Engineering & Associates, Inc., Additional Defendant.	Case No. 01-1265-CD **AMENDED COMPLAINT** Filed on Behalf of Plaintiff: Continental Construction, Inc.

Counsel of Record For This Party:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

AMENDED COMPLAINT

And now comes the Plaintiff, Continental Construction, Inc., ("CCI") by and through its undersigned counsel, and files the following Amended Complaint, and in support thereof alleges as follows:

208. CCI commenced this action by filing its Original Complaint on or about August 3, 2001, which is incorporated herein by reference as if set forth in full.

COUNT XXIV: NEGLIGENT MISREPRESENTATION

209. The averments set forth in Paragraphs 1 through 207 of the Original Complaint are incorporated herein by reference as if set forth in full.

210. Additional Defendant, Sweetland Engineering & Associates, Inc. ("Engineer"), provided design information for construction of the Project in its capacity as one engaged in the business of supplying design information, and as the Engineer of Record for the Project.

211. More specifically, the Engineer supplied its design information in the Contract Documents, including the Plans and Specifications, which were distributed to contractors, including CCI, who were interested in bidding on the Contract for the Project.

212. The Engineer intended, knew or should have known that others would use the provided design information for their own benefit during the course of their own business activities relating to the Work.

213. Under Section 552 of the Restatement (Second) of Torts and Bilt-Rite Contractors, Inc. v. The Architectural Studio, No. 74 MAP 2002, 2005 WL 120794 (Pa. Jan. 19, 2005), the Engineer had a duty to exercise reasonable care or competence in obtaining or communicating the design information included in the Contract Documents.

214. The Engineer, through its acts, omissions, conduct, words and assertions as primarily set forth in the Contract Documents and conveyed at the Mandatory Pre-Bid Conference, failed to exercise such reasonable care by negligently, recklessly, and/or knowingly and intentionally providing inaccurate or false design information relevant to the Work to interested bidders, including CCI.

215. Specifically, the Engineer failed to exercise reasonable care when it provided inaccurate and unreliable design information relating to the following issues, among others:

a. The incomplete status of the easements and right-of-ways necessary for performance of the Work;

b. The location and presence of the concrete under State Route 2024;

c. The location and presence of the concrete under Laurel Run and Arc Road;

d. The location and presence of the brick, concrete, ash and sand pits associated with an abandoned subsurface brickyard;

e. The location and presence of subsurface and abandoned concrete foundations;

f. The location and presence of protected wetlands in the Site;

g. The inadequate status of the permits required for performance of the Work;

h. The existence of a protected wild trout stream and watershed area, namely Simeling Run and Laurel Run Watershed Areas, through the Site;

i. The inadequate status of the E&S Control Plan included in the Contract Documents;

j. The lack of 2 dumpsites;

k. The various aspects of the Work which were required to be changed due to PennDOT requirements, including relocation of storm and sanitary sewerline, and additional work associated with PennDOT paving requirements;

l. The inaccurate and/or omitted depiction of underground utilities throughout the Site;

m. The promised winter "shut-down"; and

n. The necessity for PennDOT approved manholes.

216. The Engineer knew or should have known that its misrepresentations relating to the material facts averred above would be relied upon by bidders, including CCI, in formulating Bid Proposals, and to their detriment.

217. CCI reasonably relied to its detriment upon the Engineer's misrepresentation of the material facts associated with the Work as contained in the Contract Documents and conveyed at the Mandatory Pre-Bid Conference in formulating its Bid Proposal and performing the Work.

218. As a direct and proximate consequence of the Engineer's misrepresentations, omissions, and/or failure to provide accurate design information, CCI suffered significant

damages in the form of additional costs, additional and lost labor productivity, and extended jobsite and home office overhead.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against Sweetland Engineering & Associates, Inc. for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

Respectfully submitted,

DATED: _____

_____

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

Attorney for Plaintiff,
Continental Construction, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this _____ day of March 2005, a true and correct copy of the foregoing AMENDED COMPLAINT was delivered via U.S. mail, postage pre-paid, to the following:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis Edelstein
3510 Trindle Road
Camp Hill, PA 17011

Attorneys for Defendant

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Attorneys for Additional Defendant

_____
Kevin J. McKeon

CERTIFICATE OF SERVICE

This is to certify that on this 18th day of March 2005, a true and correct copy of the foregoing MOTION FOR LEAVE TO FILE AMENDED COMPLAINT was delivered via U.S. mail, postage pre-paid, and via e-mail to the following:

Shaun J. Mumford, Esquire
Margolis Edelstein
3510 Trindle Road
Camp Hill, PA 17011
Attorneys for Defendant

Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Attorneys for Additional Defendant

Kevin J. McKeon

No. 01-1265-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

PLAINTIFF,

vs.

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

DEFENDANT,

vs.

SWEETLAND ENGINEERING & ASSOCIATES, INC ,

ADDITIONAL DEFENDANT.

CIVIL DIVISION
NO. 01-1265-CD

ADDITIONALDEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

FILED ON BEHALF OF: **ADDITIONAL DEFENDANT, SWEETLAND ENGINEERING & ASSOCIATES, INC.**

COUNSEL OF RECORD FOR THIS PARTY:

PAUL M. MANNIX, ESQUIRE
PA ID NO. 76225

JEFFREY A. KUBAY, ESQUIRE
PA ID NO. 76378

WAYMAN, IRVIN & MCAULEY, LLC
FIRM #583
1624 FRICK BUILDING
437 GRANT STREET
PITTSBURGH, PA 15219

412-566-2970 (PHONE)
412-391-1464 (FAX)

JURY TRIAL DEMANDED

FILED no cc
m/11:00BV
MAR 30 2005
William A. Shaw
Prothonotary/Clerk of Courts

No. 01-1265-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	CIVIL DIVISION
	NO. 01-1265-CD
PLAINTIFF,	
vs.	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	
DEFENDANT,	
vs.	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	
ADDITIONAL DEFENDANT.	

ADDITIONAL DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

AND NOW, comes ADDITIONAL DEFENDANT, SWEETLAND ENGINEERING & ASSOCIATES, INC., by and through its attorneys, WAYMAN, IRVIN & McAULEY, LLC, and files the within Opposition to Plaintiff's Motion for Leave to File an Amended Complaint, averring as follows:

1. Continental Construction, Inc. (hereinafter referred to as "CCI") commenced this action against the Wallaceton-Boggs Municipal Authority (hereinafter referred to as "WBMA") on August 3, 2001, raising claims for Breach of Contract, Quantum Meruit, Breach of Commonwealth Procurement Code and a Civil Rights Action (Equal Protection/Sex Discrimination).

2. Now, after nearly four (4) years have passed since the filing of the original Complaint, CCI seeks to file an Amended Complaint by asserting a direct claim against Sweetland Engineering & Associates, Inc. (hereinafter referred to as "Sweetland Engineering").

3. For the reasons set forth below, Sweetland Engineering objects to CCI's request to file an Amended Complaint, as such an amendment would be unduly prejudicial and would be time barred by the applicable statute of limitations.

PLAINTIFF'S NEW CAUSE OF ACTION IS BARRED BY THE STATUTE OF LIMITATIONS

4. Although a court may permit a complaint to be amended to change the form of the action, an amendment to introduce a new cause of action should not be permitted when the proposed new claim would be barred by the statute of limitations. *Willet v. Evergreen Homes*, 595 A.2d 164 (Pa.Super. 1991); *Krause v. Great Lakes Holding Co.*, 563 A.2d 1182 (Pa.Super. 1989); *Boarts v. McCord*, 511 A.2d 204 (Pa.Super. 1986).

5. Thus, an amendment to a complaint is not permissible after the expiration of a statute of limitations where the purpose is to introduce a new cause of action. *Id.*

6. In the present case, there is absolutely no question that CCI seeks to introduce a new cause of action against Sweetland Engineering, as CCI has never filed a claim against Sweetland Engineering and the Complaint to Join filed by the WBMA did not include a negligent misrepresentation claim.

7. Now, CCI seeks to file a negligent misrepresentation claim against Sweetland Engineering based on the Statement (Second) of Torts §552 and the *Bilt-Rite Contractors, Inc. v. Architectural Studio* case.

8. Such a claim would be governed by a two (2) year status of limitation, as set forth in 42 Pa.C.S.A. §5524(7).

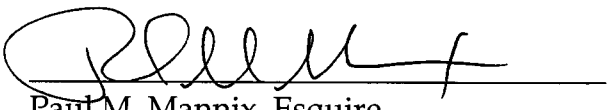
9. As the facts underlying the newly proposed claims against Sweetland Engineering are identical to the factual allegations in the Original Complaint against the WBMA and the Original Complaint was filed over three (3) years ago, it is clear that CCI's proposed cause of action against Sweetland Engineering accrued over three (3) years ago.

10. Thus, CCI is clearly seeking to file an amended complaint to raise claims which arose over two (2) years ago and are time-barred by the applicable statute of limitations.

11. Under Pennsylvania law, such an amendment is not permissible and, therefore, CCI should be precluded from filing its proposed Amended Complaint.

Respectfully submitted,

WAYMAN, IRVIN & McAULEY, LLC



Paul M. Mannix, Esquire
PA ID No. 76225

Jeffrey A. Kubay, Esquire
PA ID No. 76378

Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

No. 01-1265-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT,** has been served on the following counsel of record by first-class U.S. mail, postage pre-paid, or by hand-delivery, this 28th day of March, 2005:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
MARGOLIS, EDELSTEIN
P.O. Box 932
Harrisburg, PA 17108-0932

Kevin J. McKeon, Esquire
WATT, TIEDER, HOFFAR & FITZGERALD, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102

WAYMAN, IRVIN & McAULEY, LLC

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire

Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

:221736.1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc., Plaintiff, v. Wallaceton-Boggs Municipal Authority, Defendant, v. Sweetland Engineering & Associates, Inc., Additional Defendant.	Case No. 01-1265-CD **PROOF OF SERVICE OF DISCOVERY REQUESTS** Filed on Behalf of Plaintiff: Continental Construction, Inc.

Counsel of Record For This Party:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

FILED
APR 11 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

PROOF OF SERVICE OF DISCOVERY REQUESTS

I, Kevin J. McKeon, hereby certify that true and correct copies of Plaintiff's Requests for Documents directed to Richard J. Shimmel, Christopher P. Bungo, and Bernadette Robbins, respectively, were served on the 6th day of April, 2005, via U.S. mail, postage prepaid, and via email, upon the following:

Shaun J. Mumford, Esquire
Margolis Edelstein
3510 Trindle Road
Camp Hill, PA 17011
Attorneys for Defendant

Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Attorneys for Additional Defendant

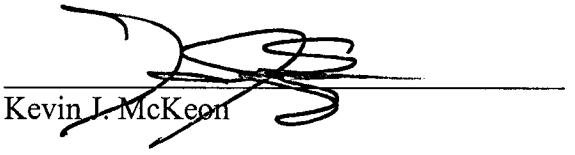
Kevin J. McKeon

CERTIFICATE OF SERVICE

I, Kevin J. McKeon, hereby certify that a true and correct copy of the foregoing Proof of Service of Discovery Requests was served on the 6th day of April, 2005, via U.S. mail, postage prepaid, and via e-mail, upon the following:

Shaun J. Mumford, Esquire
Margolis Edelstein
3510 Trindle Road
Camp Hill, PA 17011
Attorneys for Defendant

Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Attorneys for Additional Defendant



Kevin J. McKeon

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc., Plaintiff, v. Wallaceton-Boggs Municipal Authority, Defendant, v. Sweetland Engineering & Associates, Inc., Additional Defendant.	Case No. 01-1265-CD **CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA** Filed on Behalf of Plaintiff: Continental Construction, Inc.

Counsel of Record For This Party:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

FILED GK NO CC
m/11:22BK
APR 12 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Continental Construction, Inc. certifies that:

(1) a notice of intent to serve the subpoenas with a copy of the subpoenas attached thereto was mailed or delivered to each party,

(2) a copy of the notice of intent, including the proposed subpoenas, is attached to this certificate,

(3) opposing counsel have waived the 20-day period and any objection to the attached subpoenas, and

(4) the subpoenas which will be served are identical to the subpoenas attached to the notice of intent to serve the subpoenas.

Date: April 11, 2005

Kevin J. McKeon (Pa I.D.# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Drive, Suite 100
McLean, VA 22102
703-749-1000
703-749-8029 (facsimile)

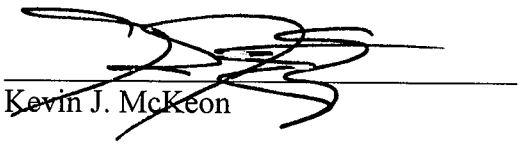
Attorney for Continental Construction, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this 11th day of April 2005, a true and correct copy of the foregoing CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA was delivered via U,S. mail, postage pre-paid, and via e-mail to the following:

Shaun J. Mumford, Esquire
Margolis Edelstein
3510 Trindle Road
Camp Hill, PA 17011
Attorneys for Defendant

Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Attorneys for Additional Defendant



Kevin J. McKeon

FILED
APR 12 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc., Plaintiff, v. Wallaceton-Boggs Municipal Authority, Defendant, v. Sweetland Engineering & Associates, Inc., Additional Defendant.	Case No. 01-1265-CD **NOTICE OF INTENT TO SERVE SUBPOENAS** Filed on Behalf of Plaintiff: Continental Construction, Inc.

Counsel of Record For This Party:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

NOTICE OF INTENT TO SERVE SUBPOENAS

Pursuant to Pa. R. Civ. P. 4009.21, Plaintiff, Continental Construction, Inc., intends to serve the attached subpoenas for production of documents and things on the following third parties:

- Pennsylvania Department of Environmental Protection ("DEP"),
- Clearfield County Conservation District ("District"),
- Pennsylvania Department of Transportation ("PennDOT"),
- Pennsylvania Fish and Boat Commission ("PFBC"),
- Mr. George S. Test, Esquire,
- ~~Mr. Christopher Bungo, and~~
- ~~Mr. Richard Shimmel.~~ / Withdrawn

You have twenty (20) days from the date listed below in which to file and serve written objections to any of the attached subpoenas upon counsel of record. If no objection is made subpoenas identical to those provided in this notice will be served.

Respectfully submitted,

DATED: March 4, 2005

Kevin J. McKeon (Pa. ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

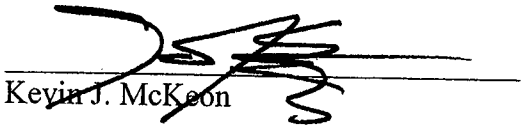
Attorney for Plaintiff,
Continental Construction, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this 4th day of April 2005, a true and correct copy of the foregoing NOTICE OF INTENT TO SERVE SUBPOENAS was delivered via U.S. mail, postage pre-paid, and via e-mail to the following:

Shaun J. Mumford, Esquire
Margolis Edelstein
3510 Trindle Road
Camp Hill, PA 17011
Attorneys for Defendant

Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Attorneys for Additional Defendant



Kevin J. McKeon

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Continental Construction, Inc., Plaintiff	)	
v.	)	NO. 01-1265-CD
Wallaceton-Boggs Municipal Authority, Defendant	)	
v.	)	
Sweetland Engineering & Associates, Inc., Additional Defendant	)	

ORDER

Now, to wit, on this 18th day of May, 2005, it is hereby ordered that oral argument on Plaintiff's Motion for Leave to File Amended Complaint is hereby scheduled for the 8th day of June, 2005, at 10:00 o'clock in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED 3cc Atty McKeon
01/10:18/01
MAY 20 2005

William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830
PHONE: (814) 765-2641
FAX: 1-814-765-7649

DAVID S. MEHOLICK
COURT ADMINISTRATOR

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.

ATTORNEYS AT LAW

8405 Greensboro Drive
Suite 100
McLean, Virginia 22102-5104

Telephone: 703-749-1000
Facsimile: 703-893-8029
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John B. Tieder, Jr.
Robert G. Watt
Julian F. Hoffar
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Richard G. Mann, Jr.
Henry D. Danforth
Carter B. Reid
Mark A. Sgarlata
Michael G. Long*
Edward J. Parrott
Paul A. Varela
Vivian Katsantonis
Kathleen O. Barnes
Shelly L. Ewald
Christopher J. Brasco
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Colin J. Smith
Jean V. Miller
Gregory J. Dukellis*
William J. Burch*
Michael D. Germain*

Robert G. Barbour
Keith C. Phillips
Marybeth Z. Gaul
Timothy E. Heffernan*
W. Drew Mallender
James M. Donahue
Bennett J. Lee
Todd R. Metz
Michael R. Gandee*
Michael P. Hutchins*
Jeffrey J. Renzulli
Joseph S. Guarino
Lewis I. Askew, Jr.
Erica S. Beardsley
David F. McPherson*
Harish Mirchandani
David R. Johnson*
Scott W. Kowalski
C. Kelly Skrabak
Brian Cashmere
Joseph C. McGowan*
Daniel J. Alexander*
Geoffrey A. Graves*
C. William Groscup
Kevin J. McKeon

John R. Marking*
Frank S. Murray
David E. Nemeth, Jr.*
Michael M. Suga*
Michelle G. Hicks
Jason D. Blatt
Christopher M. Rogers*
Sherri D. Martinelli*
Christopher G. Morrow*
Christopher M. Anzidei
Alexander N. Lamme
Timothy E. Elliott*
James M. Phelps
Justin S. Hawkins
Arnie B. Mason
Jowita L. Wysocka*
Kirk E. Niemi
Todd W. Blischke*
Andrew J. Van Ornum*
Ali Salamirad*
Ryan S. Quinn
Matthew E. Vinciguerra
Kirk J. McCormick
Howard J. Manheimer
Julie L. Gentry*

Kimberly A. Mulligan
Brian G. Muse
Christopher M. Harris
Erik B. von Zeipel*
Christopher M. Burke
Samuel B. Franck
Donna H. Tobar*
Michael M. Fernandez*
Lauren S. Altman*
Kirsten A. Roe*
Timothy L. Gorzycki
Michael D. Kiffney
John P. Bean
Brian S. Kelly
Gregory T. Gledhill
Jessica E. Hawk*
Heather A. Jones
John A. Elworth*
Elizabeth E. Graff
Kristin H. Coultas
C. Keanin Loomis

*Not Admitted in Virginia

May 11, 2005

Via Federal Express

Marcy Kelley, Deputy Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: Continental Construction, Inc. v. Wallaceton-Boggs Municipal Authority, Clearfield County Docket No. 01-1265-CD

Dear Ms. Kelley:

This letter is written to supplement our previous correspondence of April 28, 2004, which accompanied a copy of Plaintiff, Continental Construction, Inc.'s ("CCI") Brief in Support of its Motion for Leave to File an Amended Complaint. It is our understanding that you did not receive a self-addressed, postage pre-paid envelope in which to return to us the extra date-stamped copy of the aforementioned brief; as such, please find an envelope enclosed for your convenience.

Additionally, we respectfully renew our request that oral argument on CCI's Motion for Leave to File Amended Complaint be scheduled, and have enclosed a proposed order of court to accomplish the same.

Please do not hesitate to contact us with any questions. We appreciate your attention to this matter.

Very truly yours,

WATT, TIEDER, HOFFAR & FITZGERALD, LLP

Kevin J. McKeon

Enclosures
cc: Continental Construction, Inc. (w/encls)
Jeffrey A. Kubay, Esquire (w/encls – via e-mail and U.S. mail)
Shaun J. Mumford, Esquire (w/encls – via e-mail and U.S. mail)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v.

Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PRAECIPE TO ENTER APPEARANCE

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon (Pa. I.D. #76232)
WATT, TIEDER, HOFFAR &
FITZGERALD, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102
Phone: (703) 749-1000
Facsimile: (703) 893-8029
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Richard A. Bell (Pa. I.D. 06808
BELL, SILBERBLATT & WOOD
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Clearfield, PA 16830-0670
Phone: (814) 765-5537
Facsimile: (814) 765-9730
E-mail: rbell@pennswoods.net

FILED
0/9:45/ wgj
MAY 25 2005
William A. Shaw
Prothonotary/Clerk of Courts
No CERT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS
MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING &
ASSOCIATES, INC.,

Additional Defendant.

PRAECIPE TO ENTER APPEARANCE

TO THE PROTHONOTARY:

Kindly enter the appearance of :

Richard A. Bell (Pa. I.D. #06808
BELL, SILBERBLATT & WOOD
318 E. Locust Street, P.O. Box 670
Clearfield, PA 16830-0670
Phone: (814) 765-5537
Facsimile: (814) 765-9730
E-mail: rbell@pennswoods.net

as co-counsel with Kevin J. McKeon for the Plaintiff, Continental Construction, Inc., in the above-captioned matter.

Respectfully submitted,

Richard A. Bell

CERTIFICATE OF SERVICE

I, Richard A. Bell, do hereby certify that a true and correct copy of the foregoing Praecipe to Enter Appearance filed in the above-captioned action was served upon the following on the 25th day of May, 2005, via U.S. Mail:

Rolf E. Kroll, Esq.
Shaun J. Mumford, Esq.
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Counsel of Record for Wallaceton-Boggs Municipal Authority

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
Counsel of Record for Sweetland Engineering & Associates, Inc.

Richard A. Bell

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc., Plaintiff, v. Wallaceton-Boggs Municipal Authority, Defendant, v. Sweetland Engineering & Associates, Inc., Additional Defendant.	Case No. 01-1265-CD **CERTIFICATE OF SERVICE OF COURT ORDER** Filed on Behalf of Plaintiff: Continental Construction, Inc.

Counsel of Record For This Party:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

FILED NO CC
MAY 31 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

CERTIFICATE OF SERVICE OF COURT ORDER

I, Kevin J. McKeon, hereby certify that on the 24th day of May, 2005, a true copy of the Court's Order dated May 18, 2005, scheduling oral argument on Plaintiff's Motion for Leave to File Amended Complaint was delivered via U.S. mail, postage pre-paid, and via e-mail and facsimile, to the following:

Rolf Kroll, Esquire/Shaun J. Mumford, Esquire
Margolis Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
Attorneys for Defendant

Paul Mannix, Esquire/Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Attorneys for Additional Defendant

Kevin J. McKeon

A

CA

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.	:	
-vs-	:	
WALLACETON-BOGGS MUNICIPAL AUTHORITY	:	No. 01-1265-CD
-vs-	:	
SWEETLAND ENGINEERING & ASSOCIATES, INC.	:	

O R D E R

NOW, this 8th day of June, 2005, following argument on Plaintiff's Motion for Leave to File Amended Complaint, it is the ORDER of this Court that Additional Defendant have no more than ten (10) days from this date in which to supply the Court with appropriate letter brief. Counsel for the Plaintiff shall have no more than ten (10) days following his receipt of the same to reply.

BY THE COURT,

Fredric J. Ammerman

President Judge

FILED (GK)
JUN 09 2005
William A. Shaw
Prothonotary/Clerk of Courts

1cc Atty:
K. McKeon
R. Bell
R. Kroll
S. Mumford
B. Kronthal
F. McTiernan

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc., Plaintiff, v. Wallaceton-Boggs Municipal Authority, Defendant, v. Sweetland Engineering & Associates, Inc., Additional Defendant.	)	Case No. 01-1265-CD **PLAINTIFF'S REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT** Filed on Behalf of Plaintiff: Continental Construction, Inc. Counsel of Record For This Party: Kevin J. McKeon (Pa. ID# 76232) Watt, Tieder, Hoffar & Fitzgerald, LLP 8405 Greensboro Dr, Suite 100 McLean, VA 22102 703-749-1000 703-893-8029 (facsimile) Richard A. Bell (Pa. I.D. #06808) BELL, SILBERBLATT & WOOD 318 E. Locust Street, P.O. Box 670 Clearfield, PA 16830-0670 (814) 765-5537 (814) 765-9730 (facsimile)

RECEIVED
JUN 30 2005
COURT ADMINISTRATOR'S OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

PLAINTIFF'S REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

I. INTRODUCTION

The Brief in Opposition to Plaintiff's Motion for Leave to file Amended Complaint ("Opposition Brief") filed by Additional Defendant, Sweetland Engineering & Associates, Inc. ("Engineer") was received on June 20, 2005. Pursuant to this Court's Order dated June 8, 2005, Continental Construction, Inc. ("CCI") is permitted to file a Reply Brief within ten days of the date of its receipt of the Opposition Brief. Therefore, CCI submits the following Reply Brief for filing on June 30, 2005, to address the four arguments raised by the Engineer in its Opposition Brief.

II. ARGUMENT

A. The Engineer fails to analyze the factors set forth by the Pennsylvania Supreme Court to determine whether the Amended Complaint constitutes a new cause of action.

In its Opposition Brief, the Engineer conclusively states that "there is absolutely no question that CCI seeks to introduce a new cause of action." (Def.'s Opp'n Br. at 2). Yet conspicuously absent from the Opposition Brief, is any effort to argue how CCI's Amended Complaint satisfies the elements of a new cause of action as defined by the Pennsylvania Supreme Court in Saracina v. Cotoia, 208 A.2d 764, 767 (Pa. 1965).

To the contrary, in its Brief in Support of its Motion, CCI applied the factors set forth in Saracina to demonstrate that adding a formal count pursuant to Bilt-Rite Contractors, Inc. v. The Architectural Studio, 866 A.2d 270 (Pa. 2005) merely amplifies the previously asserted averments and does *not* constitute a new cause of action. (See Pl.'s Br. in Supp. of its Mot. to Amend at 13.) The Engineer has failed to set forth any case law or analysis to rebut CCI's reliance on Saracina and Bilt-Rite, and therefore CCI stands by its argument that the Amended Complaint does not constitute a new cause of action and is timely filed.

B. In suggesting that CCI should have filed direct action against the Engineer despite Linde, the Engineer fails to address plaintiff's counsel's obligation to bring adverse controlling legal authority to the Court's attention.

In its second argument, the Engineer seems to suggest that despite the holding in Linde Enters., Inc. v. Hazelton City Auth., 602 A.2d 897, 901 (Pa. Super. Ct. 1992), CCI should have filed a direct action against the Engineer in this case, and hoped that the Engineer would neglect to raise the economic loss doctrine as a defense. (See Def.'s Opp'n Br. at 4, stating "the Linde decision did not preclude plaintiffs from bringing forth these

negligence actions against engineers. Defendants had to raise the economic loss doctrine defense for such defense even to be considered.")

First, the Engineer cannot reasonably contend that Linde is not directly on point with the present matter and would act as a bar to direct action but for the decision in Bilt-Rite. Second, the Engineer's argument that CCI could simply have taken a "wait and see" approach in hopes that the Engineer may have overlooked the economic loss doctrine and Linde, cannot be reconciled with plaintiff's counsel's obligation to bring controlling adverse authority to the Court's attention. (See, e.g., Pa. Rule of Prof. Conduct No. 3.3(a)(2)). As stated previously, plaintiff's counsel was aware of the holding in Linde at the time the original Complaint was filed, and would have been ethically bound to disclose the case, resulting in quick dismissal.

C. The Engineer fails to offer an alternative construction of the language in Rule 2255(d) that tolls the statute of limitations.

In its third argument, the Engineer addresses Rules 2255(d), but conspicuously fails to address or quote the latter portion of it, which reflects a temporal component. Rule 2255(d) creates a procedural right for a plaintiff to recover against an additional defendant "as though such additional defendant *had been* joined as a defendant and duly *served* and the *initial* pleading of the plaintiff *had averred* such liability." Pa. R. Civ. P. 2255(d)(emphasis added). CCI has argued that this language operates to reach back effectively to the time of service of the initial pleading and to toll the statute of limitations as of that date. The Engineer fails to address this argument, or even to proffer an alternative construction of the quoted language, and therefore CCI continues to rely upon its argument as set forth in its Brief in Support.

In this argument, the Engineer also cites three new cases, none of which are on point with the present matter, nor do they contradict CCI's construction of the temporal component of Rule 2255(d). The Engineer cites Liba v. Colony Square Builders, 41 Pa. D. & C.3d 666 (1983), because it is the "only case discussing Rule 2255 and the statute of limitation." (Def.'s Opp'n Br. at 5.) In Liba, however, the Court of Common Pleas of Beaver County addressed Rule 2255*(b)*, not 2255(d). The Engineer also cites Martier v. Equitable Gas Co., 42 D.&C.2d 572 (Beaver Co. 1967) and Paulish v. Bakaitis, 275 A.2d 318 (Pa. 1971), but neither of these cases even mentions Rule 2255.

D. The Engineer will not be prejudiced by CCI's Amended Complaint.

In its final argument, the Engineer cites a few new cases for the accepted proposition that the statute of limitations should be strictly construed, and argues that "allowing CCI to amend its Complaint now would prejudice Sweetland." (Def.'s Opp'n Br. at 6). In making this argument, however, the Engineer fails to explain how it would be prejudiced if the Court permits CCI to file and serve the Amended Complaint. As previously highlighted by CCI, the Amended Complaint adds no new parties, facts, or damages. Furthermore, the Engineer is subject to the same scope of liability under Rule 2255(d), whether the Amended Complaint is allowed or not.

III. CONCLUSION

By issuing its decision in Bilt-Rite on January 19, 2005, the Pennsylvania Supreme Court opened the courthouse doors to an action that was previously barred by Linde. The Court has discretion to allow CCI to file and serve an Amended Complaint, and doing so will create no prejudice to the Engineer. For these reasons, and those set forth above and in

CCI's Brief in Support of its Motion, CCI respectfully requests that this Honorable Court grant Plaintiff's Motion For Leave to Amend.

Respectfully submitted,

DATED: June 29, 2005

Kevin J. McKeon (PA ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

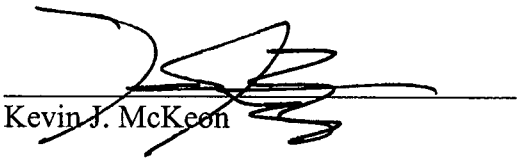
Attorney for Plaintiff,
Continental Construction, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this 29th day of June 2005, a true and correct copy of the foregoing REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT was delivered via U.S. mail, postage pre-paid, to the following:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis Edelstein
3510 Trindle Road
Camp Hill, PA 17011
Attorneys for Defendant

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
Attorneys for Additional Defendant



Kevin J. McKeon

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC. :

VS. : NO. 01-1265-CD

WALLACETON-BOGGS MUNICIPAL :

AUTHORITY :

VS. :

SWEETLAND ENGINEERING & :

ASSOCIATES, INC. :

O R D E R

NOW, this 7th day of July, 2005, following receipt of the parties' brief and the Court's consideration of the legal issues involved, it is the ORDER of this Court that the Plaintiff's Motion for Leave to File an Amended Complaint be and is hereby granted.

BY THE COURT,

President Judge

FILED 1cc
01:00 BL
JUL 11 2005
William A. Shaw
Prothonotary Clerk of Courts

1cc Attys: McKeon
Kroll
R. Bell
Mumford
Kronthal
McTiernan

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	Case No. 01-1265-CD
Plaintiff,	)	
v.	)	**AMENDED COMPLAINT**
Wallaceton-Boggs Municipal Authority,	)	
Defendant,	)	
v.	)	
Sweetland Engineering & Associates, Inc.,	)	Filed on Behalf of Plaintiff: Continental Construction, Inc.
Additional Defendant.	)	

FILED
2cc Atty McKeon
AUG 12 2005
m/11:45cm
William A. Shaw
Prothonotary

Counsel of Record For This Party:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

Richard A. Bell (Pa. I.D. #06808)
BELL, SILBERBLATT & WOOD
318 E. Locust Street, P.O. Box 670
Clearfield, PA 16830-0670
(814) 765-5537
(814) 765-9730 (facsimile)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

NOTICE TO PLEAD

TO ALL PARTIES:

You are hereby notified to file a written response to the enclosed AMENDED COMPLAINT within twenty (20) days from service hereof or a judgment may be entered against you.

Kevin J. McKeon
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

AMENDED COMPLAINT

And now comes the Plaintiff, Continental Construction, Inc., ("CCI") by and through its undersigned counsel, and files the following Amended Complaint, and in support thereof alleges as follows:

208. CCI commenced this action by filing its Original Complaint on or about August 3, 2001, which is incorporated herein by reference as if set forth in full.

COUNT XXIV: NEGLIGENT MISREPRESENTATION

209. The averments set forth in Paragraphs 1 through 207 of the Original Complaint are incorporated herein by reference as if set forth in full.

210. Additional Defendant, Sweetland Engineering & Associates, Inc. ("Engineer"), provided design information for construction of the Project in its capacity as one engaged in the business of supplying design information, and as the Engineer of Record for the Project.

211. More specifically, the Engineer supplied its design information in the Contract Documents, including the Plans and Specifications, which were distributed to contractors, including CCI, who were interested in bidding on the Contract for the Project.

212. The Engineer intended, knew or should have known that others would use the provided design information for their own benefit during the course of their own business activities relating to the Work.

213. Under Section 552 of the Restatement (Second) of Torts and Bilt-Rite Contractors, Inc. v. The Architectural Studio, No. 74 MAP 2002, 2005 WL 120794 (Pa. Jan. 19, 2005), the Engineer had a duty to exercise reasonable care or competence in obtaining or communicating the design information included in the Contract Documents.

214. The Engineer, through its acts, omissions, conduct, words and assertions as primarily set forth in the Contract Documents and conveyed at the Mandatory Pre-Bid Conference, failed to exercise such reasonable care by negligently, recklessly, and/or knowingly and intentionally providing inaccurate or false design information relevant to the Work to interested bidders, including CCI.

215. Specifically, the Engineer failed to exercise reasonable care when it provided inaccurate and unreliable design information relating to the following issues, among others:

a. The incomplete status of the easements and right-of-ways necessary for performance of the Work;

b. The location and presence of the concrete under State Route 2024;

c. The location and presence of the concrete under Laurel Run and Arc Road;

d. The location and presence of the brick, concrete, ash and sand pits associated with an abandoned subsurface brickyard;

e. The location and presence of subsurface and abandoned concrete foundations;

f. The location and presence of protected wetlands in the Site;

g. The inadequate status of the permits required for performance of the Work;

h. The existence of a protected wild trout stream and watershed area, namely Simeling Run and Laurel Run Watershed Areas, through the Site;

i. The inadequate status of the E&S Control Plan included in the Contract Documents;

j. The lack of 2 dumpsites;

k. The various aspects of the Work which were required to be changed due to PennDOT requirements, including relocation of storm and sanitary sewerline, and additional work associated with PennDOT paving requirements;

l. The inaccurate and/or omitted depiction of underground utilities throughout the Site;

m. The promised winter "shut-down"; and

n. The necessity for PennDOT approved manholes.

216. The Engineer knew or should have known that its misrepresentations relating to the material facts averred above would be relied upon by bidders, including CCI, in formulating Bid Proposals, and to their detriment.

217. CCI reasonably relied to its detriment upon the Engineer's misrepresentation of the material facts associated with the Work as contained in the Contract Documents and conveyed at the Mandatory Pre-Bid Conference in formulating its Bid Proposal and performing the Work.

218. As a direct and proximate consequence of the Engineer's misrepresentations, omissions, and/or failure to provide accurate design information, CCI suffered significant damages in the form of additional costs, additional and lost labor productivity, and extended jobsite and home office overhead.

WHEREFORE, Continental Construction, Inc. demands judgment in its favor against Sweetland Engineering & Associates, Inc. for an amount in excess of the statutory limit for compulsory arbitration, plus costs of this suit.

Respectfully submitted,

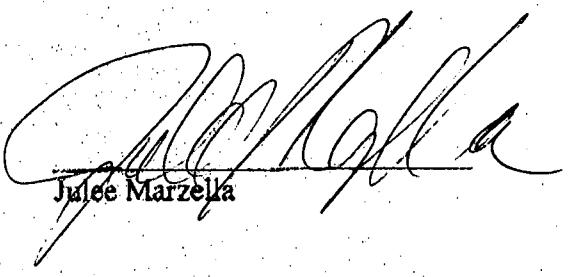
DATED: August 11, 2005

Kevin J. McKeon (Pa. ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

Attorney for Plaintiff,
Continental Construction, Inc.

VERIFICATION

I, Julee Marzella, verify that the statements made in the foregoing Amended Complaint are true and correct to the best of my knowledge, information and belief. These statements are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Julee Marzella

CERTIFICATE OF SERVICE

This is to certify that on this 11th day of August, 2005, a true and correct copy of the foregoing AMENDED COMPLAINT was delivered via U.S. mail, postage pre-paid, and e-mail to the following:

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Shaun J. Mumford, Esquire
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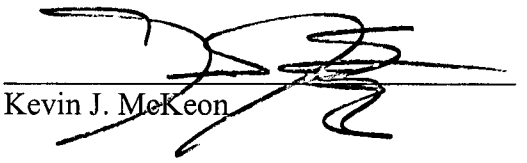

Kevin J. McKeon

WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.

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Heather A. Jones
John A. Elworth*
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Kristin H. Coultas
C. Keanin Loomis

*Not Admitted in Virginia

August 11, 2005

Via Federal Express
William Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: Continental Construction, Inc. v. Wallaceton-Boggs Municipal Authority v. Sweetland Engineering & Associates, Inc.; Docket No. 01-1265-CD

Dear Mr. Shaw:

Pursuant to Judge Ammerman's July 7, 2005 Order, enclosed for filing in the above-referenced matter is Plaintiff's Amended Complaint.

Kindly date-stamp the extra copy and return it to us in the enclosed, self-addressed, postage prepaid envelope. Additionally, by copy of this letter, we are serving all counsel of record in this matter.

If you have any questions, please do not hesitate to contact us. We appreciate your attention to this matter.

Very truly yours,

WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.

Kevin J. McKeon

KJM:rl
Enclosures

cc: Paul M. Mannix, Esq.; Jeffrey A. Kubay, Esq. (w/encl)
Rolf E. Kroll, Esq.; Shaun J. Mumford, Esq. (w/encl)
Continental Construction, Inc. (w/encl)
Richard A. Bell, Esq. (w/encl)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC., PLAINTIFF, vs. WALLACETON-BOGGS MUNICIPAL AUTHORITY, DEFENDANT, vs. SWEETLAND ENGINEERING & ASSOCIATES, INC., ADDITIONAL DEFENDANT.	CIVIL DIVISION NO. 01-1265-CD **ADDITIONAL DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.'S ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d) TO PLAINTIFF'S AMENDED COMPLAINT** File on behalf of Additional Defendant: SWEETLAND ENGINEERING & ASSOCIATES, INC. Counsel of Record for this Party: PAUL M. MANNIX, ESQUIRE PA ID NO. 76225 JEFFREY A. KUBAY, ESQUIRE PA ID NO. 76378 WAYMAN, IRVIN & MCAULEY, LLC FIRM #583 1624 Frick Building 437 Grant Street Pittsburgh, PA 15219 412-566-2970 (Phone) 412-391-1464 (Fax)

NOTICE TO PLEAD:

You are hereby notified to file a written response to the enclosed **NEW MATTER** and **NEW MATTER PURSUANT TO RULE 2252(d)** within 20 days from service hereof or a judgment may be entered against you.

By: Jeffrey A. Kubay
JEFFREY A. KUBAY, ESQUIRE
Attorney for Additional Defendant, Sweetland & Associates, Inc.

JURY TRIAL DEMANDED

FILED no cc
m 12:54 BK
SEP 08 2005
William A. Shaw
Prothonotary/Clerk of Courts

:226570.1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
	)	
	)	NO. 01-1265-CD
PLAINTIFF,	)	
	)	
vs.	)	
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
	)	
DEFENDANT,	)	
	)	
vs.	)	
	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
	)	
	)	
ADDITIONAL DEFENDANT.	)	
	)	

ADDITIONAL DEFENDANT SWEETLAND ENGINEERING & ASSOCIATES, INC.'S ANSWER, NEW MATTER AND MATTER PURSUANT TO RULE 2252(d) TO PLAINTIFF'S AMENDED COMPLAINT

AND NOW, comes the ADDITIONAL DEFENDANT, SWEETLAND ENGINEERING & ASSOCIATES, INC. (hereinafter "Sweetland"), by and through its attorneys, WAYMAN, IRVIN & McAULEY, LLC, and files the within **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d)**, and in support thereof avers the following:

1. With regard to the allegations contained in Paragraph 1 of the Plaintiff's Complaint, after reasonable investigation, Additional Defendant Sweetland is without

knowledge or information sufficient to form a belief as to the truth or falsity of said allegations. The same are therefore deemed to be denied and strict proof thereof is demanded at time of trial.

2. With regard to the allegations contained in Paragraph 2 of the Plaintiff's Complaint, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations. The same are therefore deemed to be denied and strict proof thereof is demanded at time of trial.

3. With regard to the allegations contained in Paragraph 3 of the Plaintiff's Complaint, the same are admitted.

4. With regard to the allegations contained in Paragraph 4 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted insofar that it alleges that Wallaceton-Boggs Municipal Authority (hereinafter "Authority") entered into a contract with Sweetland for engineering services relative to a sewage collection and treatment system in the Borough of Wallaceton and the Township of Boggs, in Clearfield County, Pennsylvania (hereinafter "Project"). It is specifically denied, however, that the Authority and Sweetland contracted in or shortly prior to December 1999. To the contrary, those parties entered into a contract on or about November 12, 1998. It is further specifically denied that Sweetland was employed to design a specific number of lineal feet of sewer pipe line. To the contrary, Sweetland was retained to design a sewage collection

and treatment system sufficient to service the residents of Wallaceton Borough and a portion of Boggs Township.

5. With regard to the allegations contained in Paragraph 5 of the Plaintiff's Complaint, the same are specifically denied. On the contrary, it is alleged that bids for the Project were advertised on March 8, 2000 and that Contract Documents were supplied for inspection on or about March 22, 2000.

6. With regard to the allegations contained in Paragraph 6 of the Plaintiff's Complaint, the same are admitted.

7. With regard to the allegations contained in Paragraph 7 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that Plaintiff submitted a bid proposal to construct the Project. The remainder of the allegations in Paragraph 7 are deemed denied in that, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations. The same are therefore deemed to be denied and strict proof thereof is demanded at time of trial.

8. With regard to the allegations contained in Paragraph 8 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that the proposals of the various bidders were opened by the Authority in or about April 2000 and that the Plaintiff was the lowest bidder. With respect to the remaining allegations in Paragraph 8, after reasonable investigation, Additional Defendant Sweetland is without

knowledge or information sufficient to form a belief as to the truth or falsity of said allegations. The same are therefore deemed to be denied and strict proof thereof is demanded at time of trial.

9. With regard to the allegations contained in Paragraph 9 of the Plaintiff's Complaint, the same are admitted.

10. With regard to the allegations contained in Paragraph 10 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that the Authority and Sweetland conducted a Pre-Construction Meeting with Plaintiff. It is specifically denied that the Plaintiff commenced work on the Project as stated in Paragraph 10. To the contrary, the Plaintiff did not commence work until June 21, 2000.

11. With regard to the allegations contained in Paragraph 11 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that a multitude of disputes arose between the Plaintiff, the Authority, and Sweetland. The remaining allegations in Paragraph 11 are denied in that, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations. The same are therefore deemed to be denied and strict proof thereof is demanded at time of trial.

12. With regard to the allegations contained in Paragraph 12 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is

required. By way of further response, the relationship between the Authority and Sweetland is defined by those parties' contract.

COUNT I: BREACH OF CONTRACT

13. Additional Defendant Sweetland hereby incorporates Paragraphs 1-12 as if the same were set forth herein at length.

14. With regard to the allegations contained in Paragraph 14 of the Plaintiff's Complaint, the same are admitted in part and denied in part. Said allegations are admitted insofar as Plaintiff submitted Shop Drawings to Sweetland for review of the specific dimensions of the proposed manholes and manufacturing criteria. However, it is specifically denied that the Shop Drawings were submitted for final approval and approval of the supplier, McGill Septic Tank Company (hereinafter "McGill").

15. With regard to the allegations contained in Paragraph 15 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, although Sweetland took no exceptions to the Shop Drawing submittals based upon its preliminary review thereof as a courtesy to Plaintiff prior to the execution of its Agreement and issuance of the Notice to Proceed, Sweetland did not approve the Shop Drawings and/or McGill as the manhole supplier.

16. With regard to the allegations contained in Paragraph 16 of the Plaintiff's Complaint, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations. The same are therefore deemed to be denied and strict proof thereof is demanded at time of trial. By way of further answer, to the extent that the allegations in Paragraph 16 relate to purported approvals by Sweetland, it is specifically denied that Sweetland provided final approval for the manholes and the manhole supplier, McGill.

17. With regard to the allegations contained in Paragraph 17 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that Sweetland contacted Plaintiff to withdraw any conditional approval and request that Plaintiff re-submit Shop Drawings. However, it is specifically denied that Sweetland changed the interpretation of the Contract Specifications. By way of further answer, the Contract Specifications require that the manholes to be used in PennDOT right-of-way be approved by PennDOT as required by the Contract Specifications Sections 01010(1.16)(B) and 02730(1.03) and (2.04). Approximately two weeks following Plaintiff's representation that the manholes provided by its proposed supplier were approved by PennDOT, PennDOT informed Sweetland that the manholes proposed by Plaintiff were not in fact approved by PennDOT.

18. With regard to the allegations contained in Paragraph 18 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that Plaintiff

submitted new drawings from a different manhole supplier and that Plaintiff requested the Authority to issue a Change Order. However, it is specifically denied that there was a new interpretation of the Contract Specifications. By way of further answer, Sweetland incorporates its answer to Paragraph 17 of Plaintiff's Complaint by reference as if set forth at length. Further, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations relative to any additional costs incurred by Plaintiff. The same are therefore deemed to be denied and strict proof thereof is demanded at time of trial.

19. With regard to the allegations contained in Paragraph 19 of the Plaintiff's Complaint, the same are admitted.

20. With regard to the allegations contained in Paragraph 20 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that Plaintiff reiterated its request for a Change Order and requested a 21 day extension of the Contract Time. However, it is specifically denied that Sweetland changed its interpretation of the Specifications and delayed in approving the new Shop Drawings and supplier.

21. With regard to the allegations contained in Paragraph 21 of the Plaintiff's Complaint, the same are admitted. By way of further answer, the refusal to adjust the Contract Sum or Time was justified because of Plaintiff's misinterpretation of the Contract Documents and misrepresentation that the manholes manufactured by McGill were PennDOT approved. It is further averred that Plaintiff failed to substantiate its request for a Change Order in terms of increased costs or a necessity for an extension of time.

22. With regard to the allegations contained in Paragraph 22 of the Plaintiff's Complaint, the same are denied for the reasons set forth in this Additional Defendant's answers to Paragraphs 17, 18 and 21 of Plaintiff's Complaint, with said answers being incorporated herein by reference.

23. With regard to the allegations contained in Paragraph 23 of the Plaintiff's Complaint, the same are denied for the reasons set forth in this Additional Defendant's answers to Paragraphs 17, 18 and 21 of Plaintiff's Complaint, with said answers being incorporated herein by reference.

24. With regard to the allegations contained in Paragraph 24 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT II: BREACH OF CONTRACT

25. Additional Defendant Sweetland hereby incorporates Paragraphs 1-24 as if the same were set forth herein at length.

26. With regard to the allegations contained in Paragraph 26 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

27. With regard to the allegations contained in Paragraph 27 of the Plaintiff's Complaint, the same are admitted.

28. With regard to the allegations contained in Paragraph 28 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

29. With regard to the allegations contained in Paragraph 29 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is specifically denied that the Contract Documents did not show a filter fabric fence. To the contrary, the necessity of filter fabric fence was detailed on Sheet ESCD-50 of the Soil Erosion and Sedimentation Pollution Control Plan Narrative. It is admitted that the Bid Form contained no separate bid item for filter fabric fence. By way of further answer, filter fabric fence was identified as an incidental item to be included in the contractor's unit price for bid items 1, 2, 3, 4, 5, 7, and 10.

30. With regard to the allegations contained in Paragraph 30 of the Plaintiff's Complaint, the same are admitted. By way of further answer, the use of filter fabric fence was required by Section 01025 of the Contract and the E & S Control Plan.

31. With regard to the allegations contained in Paragraph 31 of the Plaintiff's Complaint, the same are admitted.

32. With regard to the allegations contained in Paragraph 32 of the Plaintiff's Complaint, the same are admitted.

33. With regard to the allegations contained in Paragraph 33 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

34. With regard to the allegations contained in Paragraph 34 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the Plaintiff was not required to necessarily apply mulch daily and over approximately 25.92 acres. By way of further answer, to the extent that the Plaintiff was required to apply more mulch than estimated in the Contract Documents, the increase in mulch was necessitated in part because of Plaintiff's failure to properly sequence the work. Further, the Contract Documents allowed for only ten (10) feet of disturbance on either side of the installed sewer line and, in many instances, the Plaintiff disturbed 20 or more feet. By way of further answer, under Section 01025 of the Contract Documents, mulching was incidental to certain bid items.

35. With regard to the allegations contained in Paragraph 35 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the Authority was required to amend its Plan in part because of Plaintiff's failure to properly implement E&S controls as required by the Contract.

36. With regard to the allegations contained in Paragraph 36 of the Plaintiff's Complaint, the same are admitted.

37. With regard to the allegations contained in Paragraph 37 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the revised E & S Control

Plan submitted by Sweetland did not cause significant changes in the Contract with the exception of the amount of silt fence required. By way of further answer, Plaintiff failed to comply with the original erosion control requirements thereby causing significant erosion to occur. This erosion required additional filter fabric fencing which would not have been necessary had Plaintiff complied with the original E & S Control Plan. By way of further answer, filter fabric fence was identified as an incidental item to be included in the contractor's unit price for bid items 1, 2, 3, 4, 5, 7,and 10.

38. With regard to the allegations contained in Paragraph 38 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the Authority issued a Change Order compensating Plaintiff for additional work required because of the Plan amendment.

39. With regard to the allegations contained in Paragraph 39 of the Plaintiff's Complaint, the same are admitted.

40. With regard to the allegations contained in Paragraph 40 of the Plaintiff's Complaint, the same are admitted.

41. With regard to the allegations contained in Paragraph 41 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that said revised Plan required additional filter fabric fence for which Plaintiff was reimbursed by Change Order. It is specifically denied that the revised Plan altered the scope of the

Contract and required Plaintiff to incur substantial additional cost and loss of Contract Time.

42. With regard to the allegations contained in Paragraph 42 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, Plaintiff was fully compensated by Change Order with regard to changes in the revised Plan.

43. With regard to the allegations contained in Paragraph 43 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT III: BREACH OF CONTRACT

44. Additional Defendant Sweetland hereby incorporates Paragraphs 1-43 as if the same were set forth herein at length.

45. With regard to the allegations contained in Paragraph 45 of the Plaintiff's Complaint, the same are admitted.

46. With regard to the allegations contained in Paragraph 46 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the Authority obtained a permit which was approved by DEP on or about March 22, 2000.

47. With regard to the allegations contained in Paragraph 47 of the Plaintiff's Complaint, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations. The same are therefore deemed to be denied and strict proof thereof is demanded at time of trial.

48. With regard to the allegations contained in Paragraph 48 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, DEP did not revoke the Authority's permit but required it to be revised.

49. With regard to the allegations contained in Paragraph 49 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the Change Order requested by Plaintiff for a contract extension of 92 days was not occasioned by the revisions to the Authority's E & S Control Plan. By way further answer, it is believed and therefore averred that Plaintiff had ample work in other areas of the Project. Further, it is specifically denied that the sequence and flow of Plaintiff's work was impaired as to delay completion of the Project.

50. With regard to the allegations contained in Paragraph 50 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the Authority granted a one-day remobilization extension.

51. With regard to the allegations contained in Paragraph 51 of the Plaintiff's Complaint, after reasonable investigation, Additional Defendant Sweetland is without

knowledge or information sufficient to form a belief as to the truth or falsity of said allegations and therefore, the same are denied with strict proof demanded at trial.

52. With regard to the allegations contained in Paragraph 52 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, Plaintiff was provided with a reasonable extension of its contract time.

53. With regard to the allegation contained in Paragraph 53 of the Plaintiff's Complaint, the same constitutes a conclusion of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT IV: BREACH OF CONTRACT

54. Additional Defendant Sweetland hereby incorporates Paragraphs 1-53 as if the same were set forth herein at length.

55. With regard to the allegations contained in Paragraph 55 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

56. With regard to the allegations contained in Paragraph 56 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that certain physical conditions and certain subsurface conditions were indicated on the Plans, including information related to certain underground facilities based upon reasonably

available information. All remaining allegations are denied. By way of further answer, Additional Defendant Sweetland incorporates Article 4 and Section 01010 (1.11 and 1.14) of the Contract Documents.

57. With regard to the allegations contained in Paragraph 57 of the Plaintiff's Complaint, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations and therefore, the same are denied with strict proof demanded at trial.

58. With regard to the allegations contained in Paragraph 58 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, based on the information reasonably available, the Plans were substantially accurate and fairly represented the character of the work, physical conditions, subsurface conditions and location of underground facilities. By way of further answer, Additional Defendant incorporates Article 4, Section 02225 (1.07) and Section 01025 of the Contract.

59. With regard to the allegations contained in Paragraph 59 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, based on the information reasonably available, the Plans were substantially accurate and fairly represented the character of the work, physical conditions, subsurface conditions and location of underground facilities. By way of further answer, Additional Defendant incorporates Article 4, Section 02225 (1.07) and Section 01025 of the Contract.

60. With regard to the allegations contained in Paragraph 60 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, based on the information reasonably available, the Plans were substantially accurate and fairly represented the character of the work, physical conditions, subsurface conditions and location of underground facilities. By way of further answer, Additional Defendant incorporates Article 4, Section 02225 (1.07) and Section 01025 of the Contract.

61. With regard to the allegations contained in Paragraph 61 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, based on the information reasonably available, the Plans were substantially accurate and fairly represented the character of the work, physical conditions, subsurface conditions and location of underground facilities and/or utilities. By way of further answer, Additional Defendant incorporates Article 4, Section 02225 (1.07) and Section 01025 of the Contract.

62. With regard to the allegations contained in Paragraph 62 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, it is denied that the conditions and locations were not accurately depicted and that Plaintiff was significantly delayed in the progress of its work. It is further specifically denied that Plaintiff was required to employ extraordinary measures. By way of further answer, any delay was caused by Plaintiff's failure to deploy a full crew to further its construction of the Project.

63. With regard to the allegations contained in Paragraph 63 of the Plaintiff's Complaint, the same are specifically denied to the extent that Plaintiff allegedly

encountered changes and additional work resulting from defects in the Plans. By way of further answer, to the extent that Plaintiff did incur additional work, upon information and belief, Plaintiff was reasonably compensated.

64. With regard to the allegations contained in Paragraph 64 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

65. With regard to the allegations contained in Paragraph 65 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, upon information and belief, the Authority has fairly and reasonably compensated Plaintiff for additional work determined to be beyond the scope of the Contract.

66. With regard to the allegations contained in Paragraph 66 of the Plaintiff's Complaint, the same constitute a conclusion of law to which no responsive pleading is required.

67. With regard to the allegations contained in Paragraph 67 of the Plaintiff's Complaint, the same are admitted. By way of further answer, Additional Defendant Sweetland hereby incorporates Section 01010(1.04) of the Contract as if set forth at length.

68. With regard to the allegations contained in Paragraph 68 of the Plaintiff's Complaint, the same are specifically denied.

69. With regard to the allegations contained in Paragraph 69 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is

required. By way of further answer, Additional Defendant Sweetland hereby incorporates Section 01010(1.04) of the Contract as if set forth at length.

70. With regard to the allegations contained in Paragraph 70 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that CCI made certain notifications relating to unmarked and mismarked underground utilities. All remaining averments are denied. By way of further answer, Additional Defendant Sweetland hereby incorporates Section 01010(1.04) of the Contract as if set forth at length.

71. With regard to the allegations contained in Paragraph 71 of the Plaintiff's Complaint, the same constitute conclusion of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT V: BREACH OF CONTRACT

72. Additional Defendant Sweetland hereby incorporates Paragraphs 1-71 as if the same were set forth herein at length.

73. With regard to the allegations contained in Paragraph 73 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

74. With regard to the allegations contained in Paragraph 74 of the Plaintiff's Complaint, the same constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, said allegations pertain to written documents which speak for themselves. Any attempt to paraphrase or interpret said documents is specifically denied.

75. With regard to the allegations contained in Paragraph 75 of the Plaintiff's Complaint, the same constitute legal conclusions to which no responsive pleading is required. To the extent a response is required, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations.

76. With regard to the allegations contained in Paragraph 76 of the Plaintiff's Complaint, the same are specifically denied insofar as it is alleged that the Plans were false, misleading, inaccurate, and grossly misrepresented the character of the work. By way of further response, Additional Defendant incorporates Section 001010 (1.14) (B) of the Contract Documents and Specifications.

77. With regard to the allegations contained in Paragraph 77 of the Plaintiff's Complaint, the same are specifically denied.

78. With regard to the allegations contained in Paragraph 78 of the Plaintiff's Complaint, the same are specifically denied insofar as it is alleged that there were differing

site conditions. By way of further response, upon information and belief, Plaintiff was fairly and reasonably compensated for any work that exceeded the scope of the Project.

79. With regard to the allegations contained in Paragraph 79 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

80. With regard to the allegations contained in Paragraph 80 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, upon information and belief, the Authority fairly and reasonably compensated Plaintiff for work performed beyond the scope of the Contract and further adjusted the time for performance to the extent that an extension was justified.

81. With regard to the allegations contained in Paragraph 81 of the Plaintiff's Complaint, the same constitute conclusion of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT VI: BREACH OF CONTRACT

82. Additional Defendant Sweetland hereby incorporates Paragraphs 1-81 as if the same were set forth herein at length.

83. With regard to the allegations contained in Paragraph 83 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, Sheet 18 of 57 of the Contract Documents depicts the location of an existing storm sewer on Clearfield Street between Manhole A51 and A53.

84. With regard to the allegations contained in Paragraph 84 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that 450 feet of storm sewer and catch basins had to be relocated and that CCI notified the Authority and Engineer that this additional work would require a Change Order. However, it is specifically denied that said relocation was due to an error in the Plans and that the issuance of a Change Order was justified.

85. With regard to the allegations contained in Paragraph 85 of the Plaintiff's Complaint, the same are admitted. By way of further response, Plaintiff subsequently by letter dated January 19, 2001 agreed to accept $18.50 per lineal foot to relocate the sewer line and to accept $120.00 per catch basin. Further, Plaintiff was granted a two-day extension of time to complete said work.

86. With regard to the allegations contained in Paragraph 86 of the Plaintiff's Complaint, the same are specifically denied. By way of further response, Plaintiff subsequently by letter dated January 19, 2001 agreed to accept $18.50 per lineal foot to relocate the sewer line and to accept $120.00 per catch basin. Further, Plaintiff was granted a two-day extension of time to complete said work.

87. With regard to the allegations contained in Paragraph 87 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, any changes initiated by PennDOT did not substantially change the sequence and scope of the work called for by the Contract. By way of further answer, upon information and belief, Plaintiff was fairly and reasonably compensated in both contract time and payment for any additional work.

88. With regard to the allegations contained in Paragraph 88 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, any changes initiated by PennDOT did not substantially change the sequence and scope of the work called for by the Contract. By way of further answer, upon information and belief, Plaintiff was fairly and reasonably compensated in both contract time and payment for any additional work.

89. With regard to the allegations contained in Paragraph 89 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, Plaintiff was properly compensated in both contract time and payment for the additional work.

90. With regard to the allegations contained in Paragraph 90 of the Plaintiff's Complaint, the same constitute conclusion of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT VII: BREACH OF CONTRACT

91. Additional Defendant Sweetland hereby incorporates Paragraphs 1-90 as if the same were set forth herein at length.

92. With regard to the allegations contained in Paragraph 92 of the Plaintiff's Complaint, the same are admitted.

93. With regard to the allegations contained in Paragraph 93 of the Plaintiff's Complaint, the same are admitted.

94. With regard to the allegations contained in Paragraph 94 of the Plaintiff's Complaint, the same are admitted.

95. With regard to the allegations contained in Paragraph 95 of the Plaintiff's Complaint, the same are admitted. By way of further response upon information and belief, by letters dated October 31, 2000, November 1, 2000 and November 16, 2000, the Authority responded to CCI's request for Change Order and provided clarification as to how CCI would be paid for additional work.

96. With regard to the allegations contained in Paragraph 96 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied. To the extent a response is required, the same are specifically denied. To the contrary, upon information and belief, Plaintiff was properly compensated for any additional work with unit price adjustment or Change Orders.

97. With regard to the allegations contained in Paragraph 97 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, upon information and belief, Plaintiff was properly compensated for any additional work with unit price adjustment or Change Orders.

98. With regard to the allegations contained in Paragraph 98 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT VIII: BREACH OF CONTRACT

99. Additional Defendant Sweetland hereby incorporates Paragraphs 1-98 as if the same were set forth herein at length.

100. With regard to the allegations contained in Paragraph 100 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

101. With regard to the allegations contained in Paragraph 101 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, upon information and belief, the Authority nor Sweetland authorized another contractor to remove significant quantities of material from CCI's stockpile of fill.

102. With regard to the allegations contained in Paragraph 102 of the Plaintiff's Complaint, the same are admitted.

103. With regard to the allegations contained in Paragraph 103 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied. By way of further answer, upon information and belief, Plaintiff never maintained 500 cubic yards of approved backfill as required by Section 02225 (2.03) (A) of the Contract Documents and Specifications and therefore no change order was required.

104. With regard to the allegations contained in Paragraph 104 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, upon information and belief, it is denied that Plaintiff supplied additional stockpile material to the Authority.

105. With regard to the allegations contained in Paragraph 105 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, it is denied that Plaintiff supplied additional stockpile and that it is owed compensation and an extension of the Contract Time.

106. With regard to the allegations contained in Paragraph 106 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT IX: BREACH OF CONTRACT

107. Additional Defendant Sweetland hereby incorporates Paragraphs 1-106 as if the same were set forth herein at length.

108. With regard to the allegations contained in Paragraph 108 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that Plaintiff was directed to perform certain remedial work on certain roadways. However, it is specifically denied that said remedial work was the result of a defective design or weather conditions. To the contrary, said remedial work was required because of improper construction and maintenance of said roadways on the part of Plaintiff, including improper compaction.

109. With regard to the allegations contained in Paragraph 109 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, Plaintiff never requested additional compensation for remedial work on the roadways. By way of further answer, said work was within the scope of the Contract in accordance with Section 01010(1.09)(B) and (E) of the Contract Plans and Specifications.

110. With regard to the allegations contained in Paragraph 110 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

111. With regard to the allegations contained in Paragraph 111 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, said remedial work was within the scope of Plaintiff's Contract and/or was required because of Plaintiff's improper construction and maintenance.

112. With regard to the allegations contained in Paragraph 112 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT X: BREACH OF CONTRACT

113. Additional Defendant Sweetland hereby incorporates Paragraphs 1-112 as if the same were set forth herein at length.

114. With regard to the allegations contained in Paragraph 114 of the Plaintiff's Complaint, the same are specifically denied.

115. With regard to the allegations contained in Paragraph 115 of the Plaintiff's Complaint, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations.

116. With regard to the allegations contained in Paragraph 116 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the Authority did not eliminate a dump site.

117. With regard to the allegations contained in Paragraph 117 of the Plaintiff's Complaint, to the extent it is alleged that the Authority eliminated a dump site, the same are specifically denied.

118. With regard to the allegations contained in Paragraph 118 of the Plaintiff's Complaint, the same are admitted insofar as it is stated that Plaintiff demanded a Change Order which was refused.

119. With regard to the allegations contained in Paragraph 119 of the Plaintiff's Complaint, the same are specifically denied, and in further answer, this Defendant incorporates its answers to Paragraphs 116, 117 and 118.

120. With regard to the allegations contained in Paragraph 120 of the Plaintiff's Complaint, the same are specifically denied, and in further answer, this Defendant incorporates its answers to Paragraphs 116, 117 and 118.

121. With regard to the allegations contained in Paragraph 121 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XI: BREACH OF CONTRACT

122. Additional Defendant Sweetland hereby incorporates Paragraphs 1-121 as if the same were set forth herein at length.

123. With regard to the allegations contained in Paragraph 123 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, said estimates were reasonably accurate.

124. With regard to the allegations contained in Paragraph 124 of the Plaintiff's Complaint, the same are specifically denied.

125. With regard to the allegations contained in Paragraph 125 of the Plaintiff's Complaint, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations and therefore the same are denied with strict proof demanded at trial.

126. With regard to the allegations contained in Paragraph 126 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that Plaintiff notified the Authority of a request for an adjustment to the as-bid unit price and extension of contract time. Insofar as Paragraph 126 implies significant quantity differences, said implication is denied.

127. With regard to the allegations contained in Paragraph 127 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that Plaintiff notified the Authority of a request for an adjustment to the as-bid unit price and a

reasonable extension of contract time. Insofar as Paragraph 127 implies significant quantity differences, said implication is denied.

128. With regard to the allegations contained in Paragraph 128 of the Plaintiff's Complaint, the same are admitted in part and denied in part. It is admitted that Plaintiff notified the Authority of a request for an adjustment to the as-bid unit price and a reasonable extension of contract time. Insofar as Paragraph 128 implies significant quantity differences, said implication is denied.

129. With regard to the allegations contained in Paragraph 129 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, any changes in the estimated quantities did not change the sequence and the scope of the work called for by the Contract.

130. With regard to the allegations contained in Paragraph 130 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XII: BREACH OF CONTRACT

131. Additional Defendant Sweetland hereby incorporates Paragraphs 1-130 as if the same were set forth herein at length.

132. With regard to the allegations contained in Paragraph 132 of the Plaintiff's Complaint, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations and therefore the same are denied with strict proof demanded at trial.

133. With regard to the allegations contained in Paragraph 133 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required. Furthermore, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

134. With regard to the allegations contained in Paragraph 134 of the Plaintiff's Complaint and its sub-parts, the same are specifically denied. To the contrary, CCI's performance was not continuously delayed, disrupted and interfered with by Sweetland, either generally or in the particulars set forth in the sub-parts of Paragraph 134. Upon information and belief, it is denied that the Authority continuously delayed, disrupted and interfered with Plaintiff's performance. By way of further response, this Defendant hereby incorporates Paragraph 134 of the Authority's Answer to Complaint and Counterclaim as if set forth herein at length.

135. With regard to the allegations contained in Paragraph 135 of the Plaintiff's Complaint, the same are specifically denied to the extent that it is alleged that the Authority and/or Sweetland forced Plaintiff to reschedule and resequence its performance and to perform construction activities throughout the winter months, and in further

response, Additional Defendant incorporates its answer to Paragraph 134 as if set forth herein at length.

136. With regard to the allegations contained in Paragraph 136 of the Plaintiff's Complaint, the same are admitted insofar as it alleges that Plaintiff notified the Authority and Engineer of certain delays. With respect to the remaining allegations, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations and therefore the same are denied with strict proof demanded at trial.

137. With regard to the allegations contained in Paragraph 137 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the contract time and sum were adjusted for all work performed by Plaintiff beyond the scope of the Contract.

138. With regard to the allegations contained in Paragraph 138 of the Plaintiff's Complaint, the same are specifically denied insofar as it is alleged that the Authority or the Engineer caused any delays or disruptions. With respect to the remaining allegations, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations and therefore the same are denied with strict proof demanded at trial.

139. With regard to the allegations contained in Paragraph 139 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XIII: BREACH OF CONTRACT

140. Additional Defendant Sweetland hereby incorporates Paragraphs 1-139 as if the same were set forth herein at length.

141. With regard to the allegations contained in Paragraph 141 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

142. With regard to the allegations contained in Paragraph 142 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required and that said allegations pertain to Sweetland as the Authority's alleged agent, it is specifically denied that Sweetland negligently, recklessly, knowingly or otherwise concealed material facts concerning the work to the bidders. To the contrary, Sweetland, as project engineer, disclosed all relevant information in its possession and for which it was obligated to disclose.

143. With regard to the allegations contained in Paragraph 143 of the Plaintiff's Complaint, to the extent said allegations pertain to Sweetland as an alleged agent of the

Authority, said allegations are specifically denied. On the contrary, Sweetland disclosed all information relevant to the Project, and more specifically answers as follows:

(a) the status of easements and right-of-ways was not incomplete so as to impede performance of the work;

(b) Sweetland did not withhold knowledge of the location or presence of concrete under State Route 2024, but a Change Order was issued to compensate Plaintiff to saw-cut the roadway;

(c) Sweetland did not withhold knowledge of the location or presence of concrete under Laurel Run and Arc Road, but a Change Order was issued to compensate Plaintiff to saw-cut the roadway;

(d) Sweetland did not withhold knowledge of the presence of brick, concrete, ash and sandpits;

(e) Sweetland did not withhold knowledge of the location and/or presence of subsurface and abandoned concrete foundation;

(f) Sweetland did not withhold knowledge relative to the location and/or presence of protected wetlands in the Site;

(g) Sweetland did not withhold knowledge relative to the status of the permits;

(h) Sweetland did not withhold knowledge of the existence of a protected wild trout stream and water shed area;

(i) it is specifically denied that the E&S Control Plan was inadequate;

(j) Sweetland did not withhold knowledge regarding the dump sites;

(k) Sweetland did not withhold knowledge relative to aspects of the Work which were required to be changed due to PennDOT requirements;

(l) Sweetland did not withhold knowledge relative to underground utilities; and

(m) Sweetland did not withhold knowledge relative to PennDOT approved manholes.

By way of further answer, contractor was to perform this Project on an unclassified excavation basis pursuant to Section 02220, 3.02 (B) of the Contract.

144. With regard to the allegations contained in Paragraph 144 of the Plaintiff's Complaint, to the extent that said allegations pertain to Sweetland as an alleged agent of the Authority, said allegations are specifically denied. It is specifically denied that the Authority or Sweetland failed to disclose material facts within its knowledge.

145. With regard to the allegations contained in Paragraph 145 of the Plaintiff's Complaint, to the extent that said allegations pertain to Sweetland as an alleged agent of the Authority, said allegations are specifically denied. It is specifically denied that the Authority or Sweetland misrepresented any materials facts.

146. With regard to the allegations contained in Paragraph 146 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

147. With regard to the allegations contained in Paragraph 147 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XIV: BREACH OF CONTRACT

148. Additional Defendant Sweetland hereby incorporates Paragraphs 1-147 as if the same were set forth herein at length.

149. With regard to the allegations contained in Paragraph 149 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the Contract Documents were not defective nor were the conditions encountered by Plaintiff materially different from the actual character or scope of Plaintiff's work.

150. With regard to the allegations contained in Paragraph 150 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, the As-Built Scope of Work is consistent with the scope of the work contemplated by the Contract.

151. With regard to the allegations contained in Paragraph 151 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XV: QUANTUM MERUIT

152. Additional Defendant Sweetland hereby incorporates Paragraphs 1-151 as if the same were set forth herein at length.

153. With regard to the allegations contained in Paragraph 153 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

154. With regard to the allegations contained in Paragraph 154 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, upon information and belief, the reasonable value of the services rendered by Plaintiff was not in excess of its Bid Proposal.

155. With regard to the allegations contained in Paragraph 155 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XVI: BREACH OF CONTRACT

156. Additional Defendant Sweetland hereby incorporates Paragraphs 1-155 as if the same were set forth herein at length.

157. With regard to the allegations contained in Paragraph 157 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

158. With regard to the allegations contained in Paragraph 158 of the Plaintiff's Complaint, the same are specifically denied to the extent that Plaintiff claims to have encountered a multitude of significant delays, changes, and extra work beyond Plaintiff's control.

159. With regard to the allegations contained in Paragraph 159 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, any refusals to extend the Contract Time were reasonable.

160. With regard to the allegations contained in Paragraph 160 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XVII: BREACH OF CONTRACT

161. Additional Defendant Sweetland hereby incorporates Paragraphs 1-160 as if the same were set forth herein at length.

162. With regard to the allegations contained in Paragraph 162 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

163. With regard to the allegations contained in Paragraph 163 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

164. With regard to the allegations contained in Paragraph 164 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, Plaintiff did not make extraordinary efforts to perform the Work and complete the Project expeditiously.

165. With regard to the allegations contained in Paragraph 165 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

166. With regard to the allegations contained in Paragraph 166 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

167. With regard to the allegations contained in Paragraph 167 of the Plaintiff's Complaint, the same are admitted insofar as it is stated that the Authority has assessed liquidated damages.

168. With regard to the allegations contained in Paragraph 168 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

169. With regard to the allegations contained in Paragraph 169 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required. By way of further answer, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

170. With regard to the allegations contained in Paragraph 169 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XVIII: BREACH OF CONTRACT

171. Additional Defendant Sweetland hereby incorporates Paragraphs 1-170 as if the same were set forth herein at length.

172. With regard to the allegations contained in Paragraph 172 of the Plaintiff's Complaint, the same are admitted.

173. With regard to the allegations contained in Paragraph 173 of the Plaintiff's Complaint, the same are admitted.

174. With regard to the allegations contained in Paragraph 174 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, Sweetland issued a preliminary list of uncompleted items with cost estimates.

175. With regard to the allegations contained in Paragraph 175 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

176. With regard to the allegations contained in Paragraph 176 of the Plaintiff's Complaint, said allegations pertain to a written document which speaks for itself. Any attempt to paraphrase or interpret said document is specifically denied.

177. With regard to the allegations contained in Paragraph 177 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, Plaintiff has failed to complete all of the incomplete items. Further, it is specifically denied that Sweetland certified each and every uncompleted item of work.

178. With regard to the allegations contained in Paragraph 178 of the Plaintiff's Complaint, the same are admitted to the extent that the Authority has refused to release any further retention. It is specifically denied that the Authority arbitrarily continues to withhold 10% of the value of the Work. Upon information and belief, the Authority has

withheld amounts necessary to repair and/or replace defective work and to finish incomplete work.

179. With regard to the allegations contained in Paragraph 179 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XIX: BREACH OF CONTRACT

180. Additional Defendant Sweetland hereby incorporates Paragraphs 1-179 as if the same were set forth herein at length.

181. With regard to the allegations contained in Paragraph 181 of the Plaintiff's Complaint, the same are specifically denied to the extent that it is averred that Plaintiff has completed the work in full. To the contrary, Plaintiff has failed and/or refused to replace or repair defective work and resolve outstanding complaints of property owners.

182. With regard to the allegations contained in Paragraph 182 of the Plaintiff's Complaint, the same are specifically denied to the extent that it is implied that Plaintiff has completed the work in full.

183. With regard to the allegations contained in Paragraph 183 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XX: BREACH OF CONTRACT

184. Additional Defendant Sweetland hereby incorporates Paragraphs 1-183 as if the same were set forth herein at length.

185. With regard to the allegations contained in Paragraph 185 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, upon information and belief, not all of Plaintiff's payment applications were submitted in accordance with the Contract. On numerous occasions, Plaintiff requested payment for work which was not completed and for work which was defective.

186. With regard to the allegations contained in Paragraph 186 of the Plaintiff's Complaint, the same are specifically denied, and in further answer thereto, Additional Defendant incorporates its answer to Paragraph 185.

187. With regard to the allegations contained in Paragraph 187 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XXI: BREACH OF COMMONWEALTH PROCUREMENT CODE

188. Additional Defendant Sweetland hereby incorporates Paragraphs 1-187 as if the same were set forth herein at length.

189. With regard to the allegations contained in Paragraph 189 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

190. With regard to the allegations contained in Paragraph 190 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

191. With regard to the allegations contained in Paragraph 191 of the Plaintiff's Complaint, the same sets forth a statutory provision to which no responsive pleading is required.

192. With regard to the allegations contained in Paragraph 192 of the Plaintiff's Complaint, the same are specifically denied. To the contrary, upon information and belief, the Authority made payment to Plaintiff in accordance with the Contract Documents.

193. With regard to the allegations contained in Paragraph 193 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XXII: BREACH OF COMMONWEALTH PROCUREMENT CODE

194. Additional Defendant Sweetland hereby incorporates Paragraphs 1-193 as if the same were set forth herein at length.

195. With regard to the allegations contained in Paragraph 195 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

196. With regard to the allegations contained in Paragraph 196 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

197. With regard to the allegations contained in Paragraph 197 of the Plaintiff's Complaint, the same sets forth a statutory provision to which no responsive pleading is required.

198. With regard to the allegations contained in Paragraph 198 of the Plaintiff's Complaint and its sub-parts, the same are specifically denied. To the contrary, upon

information and belief, the Authority has not exhibited bad faith towards Plaintiff generally or in the particulars set forth.

199. With regard to the allegations contained in Paragraph 199 of the Plaintiff's Complaint, the same constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

COUNT XXIII: CIVIL RIGHTS ACTION

200. Additional Defendant Sweetland hereby incorporates Paragraphs 1-199 as if the same were set forth herein at length.

201. With regard to the allegation contained in Paragraph 201 of the Plaintiff's Complaint, the same constitutes a conclusion of law to which no responsive pleading is required.

202. With regard to the allegation contained in Paragraph 202 of the Plaintiff's Complaint, the same constitutes a conclusion of law to which no responsive pleading is required.

203. With regard to the allegations contained in Paragraph 203 of the Plaintiff's Complaint, after reasonable investigation, Additional Defendant Sweetland is without

knowledge or information sufficient to form a belief as to the truth or falsity of said allegations.

204. With regard to the allegations contained in Paragraph 204 of the Plaintiff's Complaint and its sub-parts, the same constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading may be deemed to be required, the same are specifically denied to the extent that they pertain to Additional Defendant Sweetland as agent for the Authority. To the contrary, Additional Defendant hereby incorporates by reference Paragraph 204 of the Authority's Answer and Counterclaim as if set forth at length.

205. With regard to the allegation contained in Paragraph 205 of the Plaintiff's Complaint, the same constitutes a conclusion of law to which no responsive pleading is required.

206. With regard to the allegation contained in Paragraph 206 of the Plaintiff's Complaint, the same constitutes a conclusion of law to which no responsive pleading is required.

207. With regard to the allegation contained in Paragraph 207 of the Plaintiff's Complaint, the same constitutes a conclusion of law to which no responsive pleading is required.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

ANSWER TO AMENDED COMPLAINT

208. With respect to the allegations contained in Paragraph 208 of the Plaintiff's Amended Complaint, to the extent that Plaintiff commenced this action by filing its original Complaint on or about August 3, 2001, said allegation is admitted.

COUNT XXIV: NEGLIGENT MISREPRESENTATION

209. Additional Defendant Sweetland hereby incorporates by reference Paragraphs 1-208 as if the same were set forth herein at length.

210. With regard to the allegations contained in Paragraph 210 of the Plaintiff's Amended Complaint, the same are admitted.

211. With regard to the allegations contained in Paragraph 211 of the Plaintiff's Amended Complaint, the same are admitted.

212. With regard to the allegations contained in Paragraph 212 of the Plaintiff's Amended Complaint, the same constitute conclusions of law to which no responsive pleadings is required. To the extent that a responsive pleading may be deemed to be required, any design information provided was done so pursuant to Sweetland's contract with the Authority for professional services relative to a sewage collection and treatment system sufficient to service the residents of Wallaceton Borough and a portion of Boggs Township, Clearfield County, Pennsylvania. Pursuant to the Bid and/or Contract Documents, said design information was furnished to prospective bidders for use in the

formulation of a bid, with the requirement that said bidder obtain and study (or assume responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and underground facility) at or contiguous to the site or otherwise which may affect cost progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by the bidder. Bidders were further required to correlate the information known to the bidder and information and observations obtained from requisite site visits with the information in the Bid and/or Contract Documents.

213. With regard to the allegations contained in Paragraph 213 of the Plaintiff's Amended Complaint, the same constitute conclusions of law to which no responsive pleading is required.

214. With regard to the allegations contained in Paragraph 214 of the Plaintiff's Amended Complaint, the same constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading may be deemed to be required, it is specifically denied that Sweetland failed to exercise reasonable care in providing design information pursuant to its contract with the Authority.

215. With regard to the allegations contained in Paragraph 215 of the Plaintiff's Amended Complaint and its sub-parts thereto, the same constitute conclusions of law to

which no responsive pleading is required. To the extent a response is required, the same are specifically denied.

216. With regard to the allegations contained in Paragraph 216 of the Plaintiff's Amended Complaint, the same constitute conclusions of law to which no responsive pleadings is required. To the extent that a responsive pleading may be deemed to be required, any design information provided was done so pursuant to Sweetland's contract with the Authority for the ultimate construction of a sewage collection and treatment system sufficient to service the residents of Wallaceton Borough and a portion of Boggs Township, Clearfield County, Pennsylvania. Pursuant to the Bid and/or Contract Documents, said design information was furnished to prospective bidders for use in the formulation of a bid, with the requirement that said bidder obtain and study (or assume responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and underground facility) at or contiguous to the site or otherwise which may affect cost progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by the bidder. Bidders were further required to correlate the information known to the bidder and information and observations obtained from requisite site visits with the information in the Bid and/or Contract Documents.

217. With regard to the allegations contained in Paragraph 217 of the Plaintiff's Amended Complaint, the same constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading may be deemed to be required, it is specifically denied that Sweetland misrepresented any material facts associated with the Work as contained in the Contract Documents and conveyed at the Mandatory Pre-Bid Conference.

218. With regard to the allegations contained in Paragraph 218 of the Plaintiff's Amended Complaint, the same constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading may be deemed to be required, after reasonable investigation, Additional Defendant Sweetland is without knowledge or information sufficient to form a belief as to the truth or falsity of said allegations regarding the damages, if any, sustained by Plaintiff. The same are therefore deemed to be denied and strict proof thereof is demanded at time of trial.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. respectfully requests judgment in its favor.

NEW MATTER

219. Additional Defendant Sweetland hereby incorporates Paragraphs 1-218 as if the same were set forth herein at length.

220. Any and all claims against Sweetland are barred by the applicable statute of limitations.

221. Any and all injuries and damages sustained by Plaintiff, if any, are a result of the superseding, intervening, and/or independent causes over which this Additional Defendant had no control and for which this Additional Defendant cannot be held liable.

222. The claims against this Additional Defendant are barred by the Economic Loss Doctrine.

223. The claims against this Additional Defendant are barred by the failure of Plaintiff to comply with the terms of its contract with the Authority and the specifications relevant to the Project.

224. This Additional Defendant asserts all affirmative defenses set forth in Rule 1030 of the Pennsylvania Rules of Civil Procedure.

225. Any and all claims against this Additional Defendant and/or any recovery by Plaintiff is barred in whole in part by the doctrines of recoupment and set-off.

226. Plaintiff's claims are barred or limited by its failure to mitigate damages, if any.

227. Plaintiff's claims are barred by operation of the Plaintiff's contributory negligence.

228. Plaintiff's claims are barred by operation and application of the terms of its contract with the Authority and/or the Contract Documents.

229. Plaintiff has failed to state a claim upon which relief can be granted against this Defendant.

NEW MATTER PURSUANT TO RULE 2252(d)

230. Additional Defendant Sweetland hereby incorporates Paragraphs 1-226 as if the same were set forth herein at length.

231. This Additional Defendant continues to deny any and all liability to Plaintiff and/or Defendant Authority. However, if it is determined at time of trial that this Defendant is liable, then, in that event, this Additional Defendant files this cross claim pursuant to Rule 2252(d) under the Pennsylvania Rules of Civil Procedure.

232. Solely for the purposes of this Cross claim, this Additional Defendant hereby incorporates by reference, as though fully set forth herein, the allegations of Plaintiff's Complaint and Amended Complaint and avers that Defendant Authority is solely liable to Plaintiff or jointly and/or severally liable to Plaintiff, or in the alternative, liable over to this Additional Defendant for indemnity and/or contribution.

WHEREFORE, Additional Defendant Sweetland Engineering & Associates, Inc. demands judgment against all other named Defendants for any sums that these Defendants may be obligated to pay as a result of this litigation.

JURY TRIAL DEMANDED.

Respectfully submitted,

WAYMAN, IRVIN & McAULEY, LLC

Jeffrey A. Kubay

PAUL M. MANNIX, ESQUIRE
JEFFREY A. KUBAY, ESQUIRE
Attorneys for Additional Defendant,
Sweetland Engineering & Associates, Inc.

VERIFICATION

I, Ronnie Senior of Sweetland Engineering & Associates, Inc. have read the foregoing Answer, New Matter and New Matter under Rule 2252(d) to Plaintiff's Amended Complaint and verify that the statements contained therein are true to the best of my knowledge, information and belief. This verification is made, in part, upon information and belief based upon investigations and document review conducted by representatives of Sweetland Engineering & Associates, Inc. and the attorneys representing Sweetland Engineering & Associates, Inc.

This statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date: 9-01-05

Ronnie Senior

NO. 01-1265-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d)** has been served on the following counsel of record by first-class U.S. mail, postage pre-paid, or by e-mail, this 6th day of Sept, 2005:

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald, LLP
7929 Westpark Drive, Suite 400
McLean, VA 22102
(*Attorney for Plaintiff*)

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
(*Attorney for Authority*)

WAYMAN, IRVIN & McAULEY, LLC

Jeffrey A. Kubay, Esquire

Attorney for Additional Defendant,
Sweetland Engineering & Associates, Inc.

:226570.1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	Case No. 01-1265-CD
Plaintiff,	)	
v.	)	**CERTIFICATE OF MERIT**
Wallaceton-Boggs Municipal Authority,	)	
Defendant,	)	
v.	)	
Sweetland Engineering & Associates, Inc.,	)	Filed on Behalf of Plaintiff: Continental Construction, Inc.
Additional Defendant.	)	

FILED
SEP 26 2005
William A. Shaw
Prothonotary/Clerk of Courts
1 CERT TO ATTY

Counsel of Record For This Party:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)

Richard A. Bell (Pa. I.D. #06808)
BELL, SILBERBLATT & WOOD
318 E. Locust Street, P.O. Box 670
Clearfield, PA 16830-0670
(814) 765-5537
(814) 765-9730 (facsimile)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

CERTIFICATE OF MERIT

Pursuant to Pa. R. Civ. P. 1042.3, this is to certify that an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised by Sweetland Engineering & Associates, Inc., in the practice and work performed on the sanitary sewer project that is the subject of the Amended Complaint at this docket number, fell outside acceptable professional standards, and that such conduct was a cause in bringing about harm to the Plaintiff, Continental Construction, Inc.

Respectfully submitted,

DATED: September 23, 2005

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)
Attorney for Plaintiff,
Continental Construction, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of September, 2005, a true and correct copy of the foregoing CERTIFICATE OF MERIT was delivered via U.S. mail to the following:

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
Margolis Edelstein
3510 Trindle Road
Camp Hill, PA 17011
rkroll@margolisedelstein.com
smumford@margolisedelstein.com

Attorneys for Defendant

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219
pmannix@waymanlaw.com
jkubay@waymanlaw.com

Attorneys for Additional Defendant

Kevin J. McKeon

ROLF E. KROLL, ESQUIRE
Pa. Supreme Court I.D. No. 58874
MARGOLIS EDELSTEIN
3510 Trindle Road
Camp Hill, Pennsylvania 17011
Telephone: [717] 975-8114 **Direct Dial:** (717) 760-7502
Fax: [717] 975-8124
E-Mail: rkroll@margolisedelstein.com

Attorneys for Defendant:
WALLACETON-BOGGS MUNICIPAL AUTHORITY

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	:	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
v.	:	CIVIL ACTION – LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant,	:	NO. 01-1265-CD
v.	:	
SWEETLAND ENGINEERING, Additional Defendant.	:	JURY TRIAL DEMANDED

FILED
NOV 15 2005
William A. Shaw
Prothonotary/Clerk of Courts
1 CERT TO ATTY

CERTIFICATE OF MERIT AS TO SWEETLAND ENGINEERING

I, ROLF E. KROLL, ESQUIRE, attorney for Defendant, Wallaceton-Boggs Municipal Authority, certify that:

☐ An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause of bringing about the harm; or

☒ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this Defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable

professional standards and that such conduct was a cause in bringing about the harm; or

☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this Defendant.

Dated: 11/14/05

ROLF E. KROLL, ESQUIRE
MARGOLIS EDELSTEIN
3510 Trindle Road
Camp Hilll, PA 17011
[717] 760-7502

Attorneys for Defendants,
WALLACETON-BOGGS MUNICIPAL AUTHORITY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing CERTIFICATE OF MERIT AS TO SWEETLAND ENGINEERING on all counsel of record by placing the same in the United States mail at Camp Hill, Pennsylvania, first-class postage prepaid, on the 14th day of November, 2005, and addressed as follows:

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald
8405 Greensboro Drive, Suite 100
McLean, VA 22102

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
437 Grant Street, Suite 1624
Pittsburgh, PA 15219-6101

MARGOLIS EDELSTEIN

By: _____
JoAnn E. Nelson, Secretary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	CIVIL DIVISION
PLAINTIFF,	NO. 01-1265-CD
vs.	**ADDITIONAL DEFENDANT'S MOTION FOR PROTECTIVE ORDER**
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	
DEFENDANT,	File on behalf of Additional Defendant: **SWEETLAND ENGINEERING & ASSOCIATES, INC.**
vs.	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	COUNSEL OF RECORD FOR THIS PARTY:
ADDITIONAL DEFENDANT.	PAUL M. MANNIX, ESQUIRE PA ID NO. 76225
	JEFFREY A. KUBAY, ESQUIRE PA ID NO. 76378
	WAYMAN, IRVIN & MCAULEY, LLC FIRM #583 1624 FRICK BUILDING 437 GRANT STREET PITTSBURGH, PA 15219
	412-566-2970 (PHONE) 412-391-1464 (FAX)
JURY TRIAL DEMANDED	

FILED NO CC
m/1:57/6d
MAR 02 2006 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

:232551.1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
	)	
	)	NO. 01-1265-CD
PLAINTIFF,	)	
	)	
vs.	)	
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
DEFENDANT,	)	
	)	
vs.	)	
	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
	)	
ADDITIONAL DEFENDANT.	)	
	)	

ADDITIONAL DEFENDANT'S MOTION FOR PROTECTIVE ORDER

AND NOW, comes the Additional Defendant, Sweetland Engineering & Associates, Inc. ("Sweetland"), by and through its attorneys, WAYMAN, IRVIN & McAULEY, LLC, and files the following **ADDITIONAL DEFENDANT'S MOTION FOR PROTECTIVE ORDER**, and in support thereof avers the following:

1. This action arises out of a sewer line construction project performed by Plaintiff Continental Construction, Inc. ("CCI") for the Wallaceton-Boggs Municipal Authority ("Authority").

2. CCI previously issued a Notice of Deposition of Sweetland Engineering & Associates, Inc. Pursuant to Pa.R.Civ.P. 4007.1(E) scheduling a corporate designee deposition for October 4, 2005. Said deposition notice included an "Attachment A" ("Attachment") which purportedly set forth a description of the particular matters to be inquired into and the materials to be produced at the time of deposition.

3. Via correspondence through counsel, Sweetland objected to various matters contained in Attachment A of the previous deposition notice and requested that CCI withdrawal certain enumerated items.

4. Subsequently, prior to the date scheduled for the deposition, the parties agreed to mediate this case and proceed with the depositions in the event that Mediation were to be unsuccessful.

5. This matter was unsuccessfully mediated on January 31 - February 1, 2006.

6. On or about February 11, 2006, CCI re-issued a Notice of Deposition of Sweetland Engineering & Associates, Inc. Pursuant to Pa.R.Civ.P. 4007.1(E).

7. Said Notice re-schedules a corporate designee deposition of Sweetland Engineering & Associates, Inc. ("Sweetland") for March 28, 2006. A true and correct copy of said Notice of Deposition is attached hereto as Exhibit A.

8. Said Notice of Deposition includes "Attachment A" again purporting to set forth a description of the particular matters to be inquired into and the materials to be produced at the time of the deposition. Said "Attachment A" identifies 62 such "matters."

9. Sweetland seeks a protective order generally as discussed herein and regarding certain enumerated matters set forth below.

10. Rule 4011 of the Pennsylvania Rules of Civil Procedure provides:

> No discovery or deposition shall be permitted which
>
> (b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or party;
>
> . . .
>
> (e) would require the making of an unreasonable investigation by the deponent or any party or witness.

Pa.R.C.P. 4011.

11. Rule 4012 of the Pennsylvania Rules of Civil Procedure, "Protective Orders," provides:

> Upon motion by a party or by the person from whom discovery or deposition is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense, including one or more of the following:
>
> . . .
>
> (2) that the discovery or deposition shall be only on specified terms and conditions . . .;
>
> . . .
>
> (4) that certain matters shall not be inquired into;

> (5) that the scope of discovery or deposition shall be limited;
>
> . . .

Pa.R.C.P. 4012.

12. Generally, numerous Items identified in "Attachment A" to the Notice of Deposition are within the realm of knowledge of former Sweetland employees.

13. While Sweetland is willing to cooperate in identifying and producing former employees, Sweetland cannot be obligated to produce such former employees as Rule 4007.1(e) corporate designees.

14. Accordingly, Sweetland seeks a Protective Order regarding said obligation.

15. With respect to Item Nos. 44, 45, 46, and 61 (relating to "Sweetland's Growth," "Staffing Similar Projects," "Other Legal Disputes," and "Legal Fees"), said matters are objectionable because they are not reasonably calculated to lead to discovery of admissible evidence.

16. With respect to Item Nos. 14, 15, and 16 (regarding Sweetland and Authority's allegations and Woman-Owned Business), Sweetland objects on the basis that said Items are overly broad and lack the requisite particularity, such that would be unduly burdensome for Sweetland to respond thereto. On the face of said Items Nos. 14-15, they seek practically any and all information in any way related to the project giving rise to this action. Consequently, Sweetland is unable to designate an individual or individuals who can adequately respond to said items. Further, with respect to Item No. 16 regarding

Woman-Owned Business, Sweetland does not maintain a database for such information and generally does not receive such information for particular projects.

17. With respect to Item Nos. 3, 4, and 61, said matters are protected by the attorney-client privilege, to the extent that said Items seek information related to communications between Sweetland representatives and their attorneys.

18. Item Nos. 17, 19-21, and 23, are related to a contractor by the name of HRI Construction who constructed a sewage treatment plant for the Authority. As such, HRI was involved in an entirely different project under a separate contract with different contractual requirements from those involved in CCI's contract with the Authority for the installation of sewer lines. Accordingly, these Items are objectionable because they are not reasonably calculated to lead to the discovery of admissible evidence in contravention of Rule 4003.1(b).

19. Based on the foregoing, Sweetland seeks a Protective Order relative to the above-identified matters.

20. Counsel for Sweetland has attempted to confer with all interested parties in order to resolve the matter without Court action pursuant to Rule 208.2(e). A Certification is attached hereto.

21. The undersigned has read the motion and, to the best of my knowledge, information and belief, there are good grounds to support this Motion and it is not interposed for delay.

WHEREFORE, Additional Defendant, Sweetland Engineering & Associates, Inc., respectfully requests that this Honorable Court enter a Protective Order striking and/or limiting Item Nos. 3, 4, 14, 15, 16, 17, 19-21, 23, 44, 45, 46 and 61 as beyond the scope of permissible discovery. Sweetland further requests that a Protective Order be entered relieving Sweetland of any obligation to produce former employees.

Respectfully submitted,

WAYMAN, IRVIN & McAULEY, LLC

Jeffrey A. Kubay

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire

Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

NO. 01-1265-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ADDITIONAL DEFENDANT'S MOTION FOR PROTECTIVE ORDER,** has been served on the following counsel of record by first-class U.S. mail, postage pre-paid, or by e-mail, this 28th day of Feb., 2006:

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Drive, Suite 100
McLean, VA 22102
(Attorney for Plaintiff)

Richard A. Bell, Esquire
Bell, Silberblatt & Wood
318 E. Locust Street
P.O. Box 670
Clearfield, PA 16830-0670
(Attorney for Plaintiff)

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
MARGOLIS, EDELSTEIN
3510 Trindle Road
Camp Hill, PA 17011
(Attorney for WBMA)

WAYMAN, IRVIN & McAULEY, LLC

Jeffrey A. Kubay

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire
Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

:232551.1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
	)	
	)	NO. 01-1265-CD
PLAINTIFF,	)	
	)	
VS.	)	
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
	)	
DEFENDANT,	)	
	)	
VS.	)	
	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
	)	
	)	
ADDITIONAL DEFENDANT.	)	
	)	

CERTIFICATION PURSUANT TO LR 208.2(e)

The undersigned hereby certifies that counsel for Sweetland has attempted to confer with all interested parties in order to resolve this matter without Court action.

WAYMAN, IRVIN & McAULEY, LLC

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire

Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

:232551.1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
	)	
	)	NO. 01-1265-CD
PLAINTIFF,	)	
	)	
VS.	)	
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
DEFENDANT,	)	
	)	
VS.	)	
	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
	)	
ADDITIONAL DEFENDANT.	)	
	)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2006, upon consideration of **ADDITIONAL DEFENDANT'S MOTION FOR PROTECTIVE ORDER**, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED. Item Nos. 14, 15, 16, 17, 19-21, 23, 44, 45, 46 and 61 of "Attachment A" of Plaintiff's Notice of Deposition of Sweetland Engineering & Associates, Inc. Pursuant to Pa.R.Civ.P. 4007.1(E) are hereby STRICKEN and said matters shall not be inquired into at that time of the deposition pursuant to Rule 4012.

It is further ORDERED that Item Nos. 3 and 4 are STRICKEN to the extent that the same seek information related to communications between Sweetland representatives and their attorneys.

It is further ORDERED that Additional Defendant Sweetland is not required to produce former Sweetland employees and that Sweetland not be precluded at trial from calling former Sweetland employees to testify to relevant matters, including those enumerated in Attachment A to the above-identified deposition notice.

BY THE COURT,

_____J.

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.	:	
	:	
vs.	:	No. 01-1265-CD
	:	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	:	
	:	
vs.	:	
	:	
	:	
SWEETLAND ENGINEERING & ASSOCIATES, INC.	:	

ORDER

AND NOW, this 7th day of March, 2006, it is the ORDER of the Court that argument on Attorney Mannix's Motion For Protective Order in the above matter has been scheduled for **Wednesday, March 15, 2006 at 11:00 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA. One-half (1/2) hour has been allotted for this matter.

It is the responsibility of Additional Defendant's Counsel to serve certified copies of said Petition and scheduling Order on all parties.

FILED 4cc
01:00:00 Atty Kubay
MAR 08 2006
GK

William A. Shaw
Prothonotary/Clerk of Courts

BY THE COURT:

FREDRIC J. AMMERMAN
President Judge

CA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC., PLAINTIFF, vs. WALLACETON-BOGGS MUNICIPAL AUTHORITY, DEFENDANT, vs. SWEETLAND ENGINEERING & ASSOCIATES, INC., ADDITIONAL DEFENDANT. ***JURY TRIAL DEMANDED***	CIVIL DIVISION NO. 01-1265-CD **PRAECIPE FOR EXPEDITED DISPOSITION OF ADDITIONAL DEFENDANT SWEETLAND'S MOTION FOR PROTECTIVE ORDER** File on behalf of Additional Defendant: **SWEETLAND ENGINEERING & ASSOCIATES, INC.** COUNSEL OF RECORD FOR THIS PARTY: PAUL M. MANNIX, ESQUIRE PA ID NO. 76225 JEFFREY A. KUBAY, ESQUIRE PA ID NO. 76378 WAYMAN, IRVIN & MCAULEY, LLC FIRM #583 1624 FRICK BUILDING 437 GRANT STREET PITTSBURGH, PA 15219 412-566-2970 (PHONE) 412-391-1464 (FAX)

FILED NO CC
09:59 BL
MAR 08 2006
William A. Shaw
Prothonotary/Clerk of Courts

:232584.1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
	)	
	)	NO. 01-1265-CD
PLAINTIFF,	)	
	)	
vs.	)	
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
DEFENDANT,	)	
	)	
vs.	)	
	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
	)	
ADDITIONAL DEFENDANT.	)	
	)	

PRAECIPE FOR EXPEDITED DISPOSITION OF ADDITIONAL DEFENDANT SWEETLAND'S MOTION FOR MOTION FOR PROTECTIVE ORDER

TO: COURT ADMINISTRATOR

Expedited Disposition of attached Motion is requested for the following reasons:

1. Said Motion concerns a corporate designee deposition scheduled for March 28, 2006.

2. The issues raised in the Motion are germane to the preparation for said deposition and compliance with Plaintiff's Notice of Deposition.

Respectfully submitted,

WAYMAN, IRVIN & McAULEY, LLC

Jeffrey A. Kubay

Paul M. Mannix, Esquire
PA ID No. 76225
Jeffrey A. Kubay, Esquire
PA ID No. 76378

Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

FOR COURT ADMINISTRATION ACTION ONLY

_____

MOTION ASSIGNED TO JUDGE _____

COUNSEL FOR MOVING PARTY NOTIFIED OF JUDICIAL ASSIGNMENT

NO. 01-1265-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PRAECIPE FOR EXPEDITED DISPOSITION OF ADDITIONAL DEFENDANT SWEETLAND'S MOTION FOR MOTION FOR PROTECTIVE ORDER,** has been served on the following counsel of record by first-class U.S. mail, postage pre-paid, or via e-mail, this 28th day of Feb., 2006:

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Drive, Suite 100
McLean, VA 22102
(Attorney for Plaintiff)

Richard A. Bell, Esquire
Bell, Silberblatt & Wood
318 E. Locust Street
P.O. Box 670
Clearfield, PA 16830-0670
(Attorney for Plaintiff)

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
MARGOLIS, EDELSTEIN
3510 Trindle Road
Camp Hill, PA 17011
(Attorney for WBMA)

WAYMAN, IRVIN & McAULEY, LLC

Jeffrey A. Kubay

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire

Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

CA

CONTINENTAL CONSTRUCTION, INC., Plaintiff	: IN THE COURT OF COMMON PLEAS : OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	: CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	: NO. 01-1265-CD
Defendant	: JURY TRIAL DEMANDED
v.	
SWEETLAND ENGINEERING, Additional Defendant	:

CERTIFICATION PURSUANT TO LR 208.2(e)

The undersigned hereby certifies that counsel for the Authority has attempted to confer with all interested parties in order to resolve this matter without Court action.

Respectfully submitted,

MARGOLIS EDELSTEIN

Rolf E. Kroll
No. 47243
Shaun J. Mumford
No.84176
3510 Trindle Road
Camp Hill, PA 17011
717-975-8114
Attorneys for Defendant, Wallaceton-Boggs

FILED 2cc
m 11:06:01 Atty
MAR 10 2006
GK
William A. Shaw
Prothonotary/Clerk of Courts

CONTINENTAL CONSTRUCTION, INC., Plaintiff	: IN THE COURT OF COMMON PLEAS : OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	: CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	: NO. 01-1265-CD
Defendant	: JURY TRIAL DEMANDED
v.	:
SWEETLAND ENGINEERING, Additional Defendant	:

ORDER OF COURT

AND NOW, this _____ day of _____, 2006, upon consideration of Defendant's Motion for Protective Order, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Motion is GRANTED. Item Nos. 5-8, 10, 12-17, 19-21, 23, 30, 35, 44-46, 50-59, and 61 of "Attachment A" of Plaintiff's Notice of Deposition of Wallaceton-Boggs Municipal Authority, pursuant to Pa. R.C.P. No. 4007.1(E) are hereby STRICKEN and said matters shall not be inquired into at that time of the deposition, pursuant to Rule 4012.

It is further ORDERED that Item Nos. 3 and 4 are STRICKEN to the extent that the same seek information related to communications between the Authority representatives and their attorneys.

BY THE COURT:

_____

J.

CONTINENTAL CONSTRUCTION, INC., Plaintiff	: IN THE COURT OF COMMON PLEAS : OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	: CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	: NO. 01-1265-CD
Defendant	: JURY TRIAL DEMANDED
v.	: DEFENDANT'S MOTION FOR PROTECTIVE ORDER
SWEETLAND ENGINEERING, Additional Defendant	: Filed on behalf of Defendant, WALLACETON-BOGGS MUNICIPAL AUTHORITY
	: COUNSEL OF RECORD FOR THIS PARTY:
	: ROLF E. KROLL, ESQUIRE : No. 47243
	: SHAUN J. MUMFORD, ESQUIRE : No. 84176
	: MARGOLIS EDELSTEIN : 3510 Trindle Road : Camp Hill, PA 17011 : 717-975-8114 : 717-975-8124 (fax)

FILED NO cc
MAR 10 2006
William A. Shaw
Prothonotary/Clerk of Courts

CONTINENTAL CONSTRUCTION, INC., Plaintiff	: IN THE COURT OF COMMON PLEAS : OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	: CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	: NO. 01-1265-CD
Defendant	: JURY TRIAL DEMANDED
v.	:
SWEETLAND ENGINEERING, Additional Defendant	:

DEFENDANT, WALLACETON-BOGGS MUNICIPAL AUTHORITY'S MOTION FOR PROTECTIVE ORDER

AND NOW, comes Defendant, Wallaceton-Boggs Municipal Authority ("Authority"), by and through its counsel, Margolis Edelstein, and moves for protective order, and in support thereof avers the following:

1. This action arises out of a sewer line construction project performed by Plaintiff, Continental Construction, Inc., ("CCI") for the Authority.

2. CCI previously issued a Notice of Deposition of the Authority, pursuant to Pa. R.C.P. No. 4007.1(E).

3. Subsequently, prior to the date scheduled for the deposition, the parties agreed to mediate this case and proceed with the depositions in the event that the mediation proved to be unsuccessful.

4. This matter was mediated on January 31-February 1, 2006, and no settlement has been reached at this time, however, negotiations are ongoing.

5. On or about February 11, 2006, CCI re-issued a Notice of Deposition of the Authority,

pursuant to Pa. R.C.P. No. 4007.1(E).

6. Said Notice re-schedules a deposition of the Authority for March 21, 2006. A true and correct copy of said Notice of Deposition is attached hereto at Exhibit "A."

7. Said Notice of Deposition includes "Attachment A" again purporting to set forth a description of the particular matters to be inquired into and the materials to be produced at the time of the deposition. Said "Attachment A" identifies 62 such "matters."

8. The Authority seeks a protective order as discussed herein regarding certain enumerated matters as set forth below.

9. Rule 4011 of the Pennsylvania Rules of Civil Procedure provides:

> No discovery or deposition shall be permitted which
>
> (b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or party;
>
> . . .
>
> (e) would required the making of an unreasonable investigation by the deponent or any party or witness

Pa. R.C.P. No. 4011.

10. Rule 4012 of the Pennsylvania Rules of Civil Procedure, entitled "Protective Orders," provides:

> Upon motion by a party or by the person from whom discovery or deposition is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense, including one or more of the following:
>
> . . .

(2) that the discovery or deposition shall be only on specified terms and conditions. . .;

. . .

(4) that certain matters shall not be inquired into,

(5) that the scope of discovery or deposition shall be limited;

. . .

Pa. R.C.P. No. 4012.

11. The construction project at issue took over a year to complete. Moreover, the engineer and contractor corresponded on virtually all matters during the course of construction, resulting in thousands of documents.

12. The members of the Authority are unpaid and untrained volunteers, who, out of the goodness of their hearts, agreed to act as the "owner" in the disbursement of funds.

13. None of the members of the Authority are engineers or have training in engineering.

14. None of the members of the Authority are lawyers or have legal training.

15. Numerous items identified in "Attachment A" to the Notice of Deposition require expert engineering opinions and/or legal conclusions with the Authority is not qualified to render. For that very reason, the Authority has retained an engineer to provide expert opinions in this litigation and an attorney to provide legal counsel. Accordingly, the Authority seeks a Protective Order regarding Item Nos. 5-8, 10, 12, 13-15, 30, 35, 44 and 50-59 which require expert engineering opinions and/or legal conclusions.

16. With respect to Item Nos. 45, 46, and 61 (relating to "Background on the Authority," "Other Legal Disputes," and "Legal Fees") said matters are objectionable because they are not

reasonably calculated to lead to discovery of admissible evidence.

17. With respect to Item Nos. 14, 15, and 16 (regarding Sweetland and Authority's allegations and Woman-Owned Business), the Authority objects on the basis that said Items are overly broad and lack the requisite particularity, such that they would be unduly burdensome for the Authority to respond thereto. On the face of said Item Nos. 14 and 15, they seek practically any and all information in any way related to the project giving rise to this action. Consequently, the Authority is unable to designate an individual or individuals who can adequately respond to said items. Further, with respect to Item No. 16 regarding Woman-Owned Business, the Authority does not maintain a database for such information and generally does not receive such information for particular projects.

18. With respect to Item Nos. 3, 4, and 61, said matters are protected by the attorney-client privilege, to the extent that said Items seek information related to communications between Authority representatives and their attorneys.

19. Item Nos. 17, 19-21, and 23, are related to a contractor by the name of HRI Construction who constructed a sewage treatment plant for the Authority. As such, HRI was involved in an entirely different project under a separate contract with different contractual requirements from those involved in CCI's contract with the Authority for the installation of sewer lines. Accordingly, these Items are objectionable because they are not reasonable calculated to lead to the discovery of admissible evidence in contravention of Rule 4003.1(b).

20. Based on the foregoing, the Authority seeks a Protective Order relative to the above-identified matters.

21. Counsel for the Authority has attempted to confer with all interested parties in order

to resolve the matter without Court action pursuant to Rule 208.2(e). A Certification is attached hereto. During this conference, Plaintiff, through counsel, expressed concern that they not be ambushed at trial by documents or evidence not disclosed during these depositions. Counsel for Plaintiff also discussed a desire to use these depositions as the final step in the factual framework to prepare a motion for summary judgment.

22. Plaintiff's counsel has been working on this project since one (1) month after the start of construction.

23. Only one (1) deposition has been taken to date.

24. It is unfair and unreasonable to hold Authority members responsible for the recitation and production of all facts responsive to these broad sweeping areas of inquiry.

25. A better approach, suggested by the undersigned, is to allow discovery to be completed in a reasonable time by the Defendants, whose counsel were not working on this case since July, 2000. Upon the completion of factual discovery, the parties will produce expert reports. If, at that time, additional discovery is required by any party to avoid surprise or to prepare for summary judgment, then said parties should be permitted to conduct that discovery at that time, prior to listing the case for trial.

26. If this Motion is denied, massive man hours will be required by these unpaid persons who are themselves, unpaid non-parties to this action in order to comply with Plaintiff's request and a temporary stay of the deposition will be required.

27. The undersigned has read the motion and, to the best of my knowledge, information and belief, there are good grounds to support this Motion and it is not interposed for delay.

WHEREFORE, Defendant, Wallaceton-Boggs Municipal Authority, respectfully requests

that this Honorable Court enter a Protective Order striking and/or limiting Item Nos.5-8, 10, 12-17, 19-21, 23, 30, 35, 44-46, 50-59 and 61as unreasonably broad, bothersome and oppressive, and requiring expert testimony, and as such, are beyond the scope of permissible discovery.

Respectfully submitted,

MARGOLIS EDELSTEIN

Rolf E. Kroll
No. 47243
Shaun J. Mumford
No.84176

3510 Trindle Road
Camp Hill, PA 17011
717-975-8114

Attorneys for Defendant, Wallaceton-Boggs

Exhibit A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

NOTICE OF DEPOSITION OF
WALLACETON-BOGGS MUNICIPAL AUTHORITY
PURSUANT TO PA. R. CIV. P. 4007.1(E)

PLEASE TAKE NOTICE that commencing at **9:00 a.m.** on **March 21, 2006**, Plaintiff, Continental Construction, Inc. ("CCI"), by and through counsel, will take the deposition upon oral examination of **Wallaceton-Boggs Municipal Authority pursuant to Pa. R. Civ. P. 4007.1(e)** at the offices of Richard A. Bell, Esq., Bell, Silberblatt & Wood, 318 E. Locust Street, Clearfield, PA 16830. The deposition will be taken for the purposes of discovery and all other purposes permitted under the Pennsylvania Rules of Civil Procedure and will continue from day to day until completed, before a court reporter duly authorized to administer oaths. A description of the particular matters to be inquired into and the materials to be produced is set forth in

"Attachment A" hereto, and plaintiff reserves the right to supplement Attachment A, upon reasonable notice.

Respectfully submitted,

DATED: February 11, 2026

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Attachment A
To
Amended Notice of Deposition of
Wallaceton-Boggs Municipal Authority Pursuant to Pa. R. Civ. P. 4007.1(e)

1. **Bid Documents**: Discuss what is regularly referred to as the "Bid Documents" generally, and specifically identify and produce all documents prepared, made available, or incorporated by reference, by Sweetland Engineering & Associates, Inc. ("Sweetland") to allow prospective bidders to estimate and/or bid upon the project at issue in the action pending at Clearfield County Court of Common Pleas Docket No. 01- 1265 CD (hereafter referred to as the "Project"). Explain the purpose of Bid Documents, and what role, if any, the Authority played in their preparation.

2. **Contract Documents**: Discuss what is regularly referred to as the "Contract Documents" generally, and specifically identify and produce all documents defining the scope of work and the respective rights, duties, and/or obligations of the Wallaceton-Boggs Municipal Authority ("Authority"), Continental Construction, Inc., and Sweetland, including, but not limited to the plans, specifications, project manual, addenda, change orders, and directives, with regard to the Project. Explain the purpose of Contract Documents, and what role, if any, the Authority played in their preparation.

3. **Document Production**: Discuss the Authority's document production in this litigation generally, and specifically identify all efforts taken by the Authority to locate and produce any and all documents responsive to Plaintiff's Requests for Production of Documents in this action, including, but not limited to photographs, e-mail and/or other computerized files, calendars, job logs, and project reports.

4. **Efforts to Comply with Rule 4007.1(e) Notice**: Discuss the process by which

the Authority attempted to satisfy its duty to comply with this Notice under Pa. R. Civ. P. 4007.1(e) generally, and specifically including the nature and extent of interviews with Authority members and representatives, and document review, if any, in order to determine all matters known or reasonably available to the Authority.

5. **Sweetland's failure to comply with the Contract Documents**: Discuss the facts relating to any and all instances in which Sweetland failed to comply with the Contract Documents.

6. **The Authority's failure to comply with the Contract Documents**: Discuss the facts relating to any and all instances in which the Authority failed to comply with the Contract Documents.

7. **Sweetland's failure to comply with the terms of the Owner-Engineer Contract**: Discuss the facts relating to any and all instances in which Sweetland failed to comply with the agreement between Sweetland and the Authority.

8. **The Authority's failure to comply with the terms of the Owner-Engineer Contract**: Discuss the facts relating to any and all instances in which the Authority failed to comply with the agreement between Sweetland and the Authority.

9. **Continental's Alleged Failures to Comply with the Contract Documents**: Identify and explain any and all instances in which Sweetland or the Authority allege that Continental failed to comply with any obligations set forth in the Contract Documents, and discuss the facts relating to such instances.

10. **Responses to Requests for Admissions**: Discuss the Authority's responses to Continental's Requests for Admissions in the pending litigation, and identify each and every fact that supports any response other than an unqualified admission. Also, to the extent you

responded by stating "see relevant documents" or words to that effect, produce the relevant documents pertaining to each response.

11. **Exhibit I to the Original Answer and Counterclaim filed by the Authority**: Discuss Exhibit I to the original Answer and Counterclaim filed by the Authority generally, and specifically describe Sweetland's role, if any, in preparation of the same, how it was prepared, who prepared it, and all facts supporting it.

12. **Actual Damages Sustained by the Authority**: Discuss any and all actual damages allegedly sustained by the Authority, including all facts to support the same, and all supporting calculations.

13. **Liquidated Damages**: Identify and produce any and all documents reflecting the manner in which the Authority calculated the dollar amounts specified in the Contract Documents for liquidated damages. Identify and explain any and all reasons, if any, as to why the Authority was entitled to withhold or assess liquidated damages against Continental.

14. **Sweetland's Allegations**: Identify and explain all facts that support or contradict Sweetland's allegations set forth in any and all of its pleadings filed and/or served in this action.

15. **The Authority's Allegations**: Identify and explain all facts that support or contradict the Authority's allegations set forth in any and all of its pleadings filed and/or served in this action.

16. **Woman-Owned Business**: Identify any and all projects in which the Authority has worked with a woman or minority-owned business, and discuss the Authority's experience in doing so. Identify and discuss any and all comments or opinions expressed by Sweetland employees, the Authority or its members about Julee Marzella, Richard Marzella, or relating to the fact that Continental was a woman-owned business.

17. **RPR Overtime**: Explain why HRI was permitted to work 2 hours per day without "Resident Project Representative" (as that term is set forth in the Contract Documents) on site, and why Continental was not permitted to do so.

18. **Refusal to Accept Oral Communication**: Explain whether the Authority had any role in Sweetland's decision to refuse to accept oral communication from Continental, and identify any other projects where the Authority imposed such a condition on a contractor.

19. **Approval (or Lack thereof) of Subcontractors**: Explain the process by which Continental could get subcontractors approved, and explain the process by which HRI got subcontractors approved. Produce any documents reflecting HRI's submission of detailed subcontractor experience and qualification information. Identify all subcontractors that performed work for HRI that were not listed in HRI's original bid.

20. **Process for Reviewing and Approving Requests for Payment**: Discuss the process for reviewing and approving Continental's requests for payment on the Project, and explain any differences in the process for HRI, and the timing for issuance of checks to Continental versus HRI.

21. **Time Extensions**: Identify who had responsibility for granting or denying requests for time extensions from Continental or from HRI, and what analysis, if any, was or should have been performed to determine whether such extensions were warranted or not. Identify any and all time extensions, if any, that CCI and HRI were granted, explain why they were granted, and identify what analysis, if any, the Authority performed to support its decisions. Also, identify any and all time extensions request by CCI and HRI that were denied and explain why. Explain the standard for granting or denying a time extension request.

22. **Decisions on Continental's Requests for Adjustment to the Contract Price**

and/or Time: Identify each of Continental's requests to adjust the Contract price and/or time. Discuss the process by which each of Continental's requests to change the Contract price and/or time was evaluated, accepted or rejected, and the length of time it took for the Authority to reach and issue a decision regarding the same.

23. **Decisions on HRI's Requests for Adjustment to the Contract Price and/or Time**: Identify each of HRI's requests to adjust its contract price and/or time. Discuss the process by which each of HRI's requests to change its contract price and/or time was evaluated, accepted or rejected, and the length of time it took for the Authority to reach and issue a decision regarding the same.

24. **Manholes in PennDot Rights-of-Way**: Discuss manholes in PennDot Rights-of-Way for the Project generally, and specifically identify and explain any and all language in the Bid Documents reflecting that manholes to be installed in PennDot rights-of-way for the Project would be required to be "PennDot approved." Identify and explain any and all Authority projects, on which contractors were required to install "PennDot approved" manholes. Identify and explain any and all differences between the McGill manholes originally submitted by Continental and the Fi-Hoff manholes actually installed in PennDot rights-of-way throughout the Project. Identify any and all efforts, if any, the Authority engaged in to allow for installation of the McGill manholes originally submitted by Continental in PennDot rights-of-way.

25. **Erosion & Sedimentation Control Plan**: Discuss the Erosion & Sedimentation Control Plan for the Project generally, and specifically identify and produce any documents constituting it. Explain how it was prepared, who was involved in its preparation, how much time was devoted to its preparation, and the quantities of silt fence and mulch, reflected therein, as well as the frequency of seeding and application of mulch, reflected therein. Discuss what

revisions were made to it, if any, and why, and the date when such revisions were communicated to Continental. Identify any and all instances, if any, in which Continental failed to comply with the Plan or revisions thereto, and any and all damages incurred by the Authority as a result.

26. **Permits**: Discuss permits for the Project generally, and specifically identify all permits that were considered for the Project, identify all permits that were acquired for the Project, how they were acquired, why they were necessary, who would enforce their terms, and who was involved in obtaining/applying for them for the Project. Also explain why certain permits, for example, a GP-8 or a Joint Water Obstruction and Encroachment Permit, were not acquired at or prior to the time of award of the Contract. Identify who was responsible for letting the Project for bid and awarding the Project to Continental without obtaining a GP-8 or Joint Water Obstruction and Encroachment Permit. Explain why the GP-5 permit for the Project was invalidated, and discuss any and all changes and/or revisions to the permits and permit applications, specifically including any changes to the figures for acreage to be disturbed in the Project area. Identify all areas of the Project where Continental could and could not work after the GP-5 was invalidated. Explain how, if at all, these areas were made known to Continental, and who had responsibility for determining such areas, and why. Explain how, if at all, Continental had responsibility for obtaining or applying for permits.

27. **Exceptional or High Quality Trout Streams**: Discuss exceptional or high quality trout streams within the general vicinity of the Project, and specifically explain whether the Authority made any effort to identify exceptional or high quality trout streams in the vicinity of the Project, and if so, what that effort consisted of, and why Simeling Run was not listed as such in applying for the GP-5 Permit for the Project. Explain how, if at all, Continental had responsibility for identifying such streams.

28. **Easements**: Discuss easements for the Project generally, and specifically identify who had responsibility for obtaining easements for the Project, and explain what role, if any, the Authority played in obtaining easements. Identify who was responsible for providing Continental with access to the Project site, and what language in the Contract Documents allowed the Authority to provide access on a piece-meal basis. Explain whether all easements for the Project were obtained prior to Notice to Proceed, and if not, why not, and identify the areas of the Project where easements were not obtained, and the dates when condemnations and/or easements were later obtained for those properties. Explain whether Continental ever requested additional time due to incomplete easements or rights-of-way, whether any such requests were denied, and if denied, why they were denied and what analysis the Authority performed, if any, to support denials. Identify all areas where Continental could not work following issuance of Notice to Proceed due to lack of easement(s).

29. **George Test, Esquire**: Explain Mr. Test's relationship to the Authority, and his role, if any, in relation to the Project. Discuss any non-privileged communications between Mr. Test and the Authority.

30. **The One Call Act**: Identify all actions, if any, the Authority took to comply with its obligations as an owner or facility owner under Pennsylvania's Underground Utility Line Protection Act, when such actions were taken, and what documentation verifies that such actions were taken. Identify any and all facts, if any, indicating that Continental failed to comply with its obligations under the Act.

31. **Site Investigation**: Identify any and all actions the Authority took to investigate the type and character of the surface and subsurface conditions of the Project prior to letting the Project for bid, and the extent of communications with the Authority, if any, regarding the same.

Identify any and all actions Continental should have performed in order to properly investigate the type and character of the surface and subsurface conditions of the Project prior to bidding.

32. **Unforeseen and Differing Site Conditions**: Discuss any unforeseen or differing site conditions on the Project generally, and identify and explain the applicable standard or criteria for providing Continental with an adjustment of the contract price or time associated with encountering unforeseen and/or differing site conditions.

33. **Concrete Under SR 2024, Laurel Run, and Arc Road**: Explain whether the Authority was aware of the presence of concrete under SR 2024, Laurel Run, or Arc Road, prior to letting the Project for bid, and if so, explain how, if at all this condition was depicted in the Bid Documents. If not depicted in the Bid Documents, explain why not. Also, identify any and all actions taken by the Authority to investigate whether such concrete existed prior to letting the Project for bid. Explain why Continental's request for a change order to adjust the contract price and time for this condition was not granted. Explain whether anyone from the Authority maintained records reflecting the amount of time Continental spent or materials Continental installed in dealing with these conditions, and produce such records, if any.

34. **Subsurface brickyard, sand and ash pits**: Explain whether the Authority was aware that there was an abandoned, subsurface brickyard, as well as sand and ash pits in the vicinity of the Project prior to letting the Project for bid, and if so, explain how, if at all, this condition was depicted in the Bid Documents. If not depicted in the Bid Documents, explain why not. Also, explain why Continental's request for a change order to adjust the contract price and time for this condition was not granted. Explain whether anyone from the Authority maintained records reflecting the amount of time Continental spent or materials Continental installed in dealing with these conditions, and produce such records, if any.

35. **Unmarked and Mis-Marked Underground Utility Lines**: Explain whether the Authority was aware that many underground utility lines in the vicinity of the Project were either not depicted in the Bid Documents at all, or mis-marked in the Bid Documents, prior to letting the Project for bid, and if so, explain how, if at all, these conditions were depicted in the Bid Documents. If not depicted in the Bid Documents, explain why not. Identify all areas in which Continental could work without encountering unmarked or mis-marked underground utility lines. Explain whether anyone from the Authority maintained records reflecting the amount of time Continental spent or materials Continental installed in dealing with these conditions, and produce such records, if any. Also, explain why Continental's request for a change order to adjust the contract price and time to account for such conditions was not granted. Finally, explain whether the Authority was aware that certain utility owners in the vicinity of the Project were not members of the One-Call system, whether the Authority was provided with location maps from these owners, and whether the Authority made any effort to notify bidders that certain utility members were not members of the One-Call system.

36. **PennDot Storm Sewer Relocation and Installation**: Explain why the storm sewer in the vicinity of Manholes A-51 and A-52 was not properly depicted in the Bid Documents, and why Continental's request for a change order to adjust the contract price and time associated with relocating approximately 450 linear feet of storm sewer was not granted. Explain whether anyone from the Authority maintained records reflecting the amount of time Continental spent or materials Continental installed in dealing with these conditions, and produce such records, if any. Discuss any and all directives given by the Authority to Continental with regard to this topic, and any underlying analysis performed to support such directives.

37. **Project Dumpsites**: Explain how the number and locations for Project dumpsites

were determined, and why only one dumpsite was ultimately provided.

38. **Mandatory Pre-Bid Conference**: Discuss the Mandatory Pre-Bid Conference generally, and specifically identify all information provided to prospective bidders at the Mandatory Pre-Bid Conference held on March 23, 2000, including whether bidders were told that all necessary easements or condemnations would be completed prior to construction, and whether bidders were told that a winter shutdown or time extension for winter conditions would be provided.

39. **Letting the Project for Bid and Decision to Award**: Explain the Authority's role, generally, in letting the Project for Bid, and specifically identify any statements by Authority members, employees, and/or agents expressing any opinion on who they would prefer to award the Project to.

40. **Winter Shutdown or Time Extension for Winter Conditions**: Explain any and all reasons why Continental was not provided with either a winter shutdown or a time extension to account for winter conditions. Also explain how any bidder, including Continental, was to complete pavement and seeding restoration during the winter months, and prior to the as-planned Final Completion date.

41. **Temporary Pavement Repairs**: Identify and explain all reasons why the Authority directed Continental to maintain and repair the temporary pavement on SR 2024 through the winter, and why Continental was never provided with a change order to adjust the contract price or time to account for such repairs.

42. **Water and Soft Material in Trench Bottom**: Explain whether the Authority was aware that in certain areas of the Project, the bottom of the sewer trench was too wet and/or otherwise unsuitable for installing sewer without significant over-excavation and backfill to

create a suitable trench bottom prior to letting the Project for bid, and if so, explain how, if at all, these conditions were depicted in the Bid Documents. If not depicted in the Bid Documents, explain why not. Also, explain why Continental's request for a change order to adjust the contract price and time to account for such conditions was not granted. Explain whether anyone from the Authority maintained records reflecting the amount of time Continental spent or materials Continental installed in dealing with these conditions, and produce such records, if any.

43. **Subsurface Foundation between Manhole AE-1 and AF-1**: Explain whether the Authority was aware of the presence of a subsurface building foundation between Manhole AE-1 and AF-1 prior to letting the Project for bid, and if so, explain how, if at all, these conditions were depicted in the Bid Documents. If not depicted in the Bid Documents, explain why not. Also, explain why Continental's request for a change order to adjust the contract price and time to account for such conditions was not granted. Explain whether anyone from the Authority maintained records reflecting the amount of time Continental spent or materials Continental installed in dealing with these conditions, and produce such records, if any.

44. **Asbestos Waterlines**: Explain whether the Authority was aware of the presence of asbestos waterlines in the vicinity of the Project, prior to letting the Project for bid, and if so, explain how, if at all, this condition was depicted in the Bid Documents. If not depicted in the Bid Documents, explain why not. Also, explain why Continental's request for a change order to adjust the contract price and time to account for such condition was not granted. Explain whether anyone from the Authority maintained records reflecting the amount of time Continental spent or materials Continental installed in dealing with these conditions, and produce such records, if any.

45. **Background on the Authority:** Discuss the creation of the Authority generally,

identify its past and present members, employees, and/or agents, and their respective dates of tenure. Identify any and all projects that the Authority has let for bid, and how the Project, in particular came into being, including arrangements for financing, and how Sweetland was retained as Engineer.

46. **Other Legal Disputes**: Discuss any and all legal actions asserted against the Authority, other than workers compensation or unemployment compensation claims, respectively, during the years 1995 through the present.

47. **Continental's Fill Stockpile**: Discuss any and all facts relating to Continental's maintenance of stockpiled fill material for the Project, and changes thereto.

48. **Estimating the Cost of the Project**: Discuss whether the Authority ever estimated the cost of the Project, generally, and specifically identify any documents reflecting the Authority's efforts to estimate the cost of the the Project, and discuss how and by whom such estimate(s) were prepared.

49. **As-planned Substantial and Final Completion of the Project**: Explain any and all actions taken by the Authority to determine the planned duration for the Project, including, but not limited to, how the Authority determined the planned dates for Substantial and Final Completion.

50. **As-built Substantial and Final Completion of the Project**: Discuss Substantial and Final Completion of the Project generally, and specifically identify dates of Substantial and Final Completion, and any and all issues and/or causes of delay to the as-planned Substantial and Final Completion dates. Discuss any and all schedule analysis of the Project performed by the Authority, or at the Authority's request, at any time.

51. **PennDot Bond Requirements**: Discuss PennDot Bond requirements for the

Project generally, and specifically explain why Continental was not provided a time extension for the time between when it received Notice to Proceed and when PennDot approved the 2-year Highway Restoration and Maintenance Bond submitted by CCI when PennDot changed its bonding requirements after award of the Project.

52. **Loss of Production**: Explain whether you believe that Continental constructed the Project in the order and manner it intended to, and if not, identify any and all facts that impacted Continental's performance. Identify any and all actions the Authority took, if any, to aid, or at least not to infere with, Continental in performing its work productively and without delay, especially considering the fact that the GP-5 was invalidated, that the Erosion & Sedimentation Control Plan was deemed insufficient, that not all easements or rights-of-way were obtained prior to award, and that many underground facilities were either mis-marked or not marked at all.

53. **Relocation of Sanitary Sewer Between Manholes A-21 and A-28**: Explain why Continental was never provided a change order to adjust the contract price and time associated with relocating the line between manholes A-21 and A-28, despite the fact that Work Directive No. 1 directed Continental to perform this work.

54. **2A vs. 2B Stone**: Explain the differences between 2A and 2B stone. Explain the differences between limestone and sandstone, and identify appropriate and inappropriate uses for each. Explain why 2B stone was initially approved, but that approval was subsequently rescinded. Explain the Authority's role, if any, in determining whether Continental could use 2A or 2B stone as pipe bedding, and what analysis, if any, the Authority performed to evaluate Continental's request to use 2B stone as a substitute. Explain why the Authority demanded a credit from Continental as a condition to allowing the use of 2B stone. Explain why the

Authority chose to disregard the recommendation of the pipe manufacturer and the Uni-Bell PVC pipe Association with regard to use of 2B aggregate as pipe bedding. Explain why HRI was permitted to substitute 2B for 2A, but Continental was not unless they provided a credit.

55. **Raising Manhole AG-3**: Explain why the elevation of manhole AG-3 was raised, and why Continental has not been reimbursed for re-surveying the line to raise it.

56. **Sheet 30 of the Plans**: Explain why Sheet 30 of the Plans does not include any grades or elevations for the lines to the clean-outs beyond manhole S-11.

57. **Relocating Manhole D-2**: Explain why manhole D-2 was designed in the center of a stream, and why Continental was not compensated for costs associated with moving it.

58. **Alignment of Line at Manhole K-1**: Explain why the alignment differs at manhole K-1 between Sheet 26 and 27 of the Plans. Considering the differing alignment, explain how Continental should have determined to fabricate manhole K-1, and if improper, explain how Continental should have corrected the manhole, if improperly fabricated, in order to receive payment for the same.

59. **Quantity Discrepancies**: Explain why Continental was not provided a change order to adjust unit prices and contract time for bid items that varied in quantity by more than plus or minus 15% from the estimate.

60. **Insurance**: Identify and produce any policy of insurance pursuant to which the Authority may be covered for the claims asserted in this litigation, identify the dollar amount of the coverage and the amount of reserves, and any changes in the reserves.

61. **Legal Fees**: Identify and discuss any and all legal fees incurred by the Authority and/or its insurance carrier in this litigation.

62. **Communications from Sweetland**: Discuss any and all communications from

Sweetland reflecting complaints about or objections to Continental's performance, its owners or representatives, and its personnel.

CERTIFICATE OF SERVICE

This is to certify that on this 11th day of February, 2006, a true and correct copy of the foregoing NOTICE OF DEPOSITION OF WALLACETON-BOGGS MUNICIPAL AUTHORITY PURSUANT TO PA. R. CIV. P. 4007.1(E) was delivered via U.S. mail, postage pre-paid, and via e-mail to the following:

Rolf E. Kroll, Esq.
Shaun J. Mumford, Esq.
Margolis, Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932
rkroll@margolisedelstein.com
smumford@margolisedelstein.com
Counsel of Record for Wallaceton-Boggs Municipal Authority

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire
Wayman, Irvin & McAuley, LLC
437 Grant Street
1624 Frick Building
Pittsburgh, PA 15219
pmannix@waymanlaw.com
jkubay@waymanlaw.com
Counsel of Record for Sweetland Engineering & Associates, Inc.

Kevin J. McKeon

CERTIFICATE OF SERVICE

I am an authorized representative of Margolis Edelstein, hereby certify that I have served a true and correct copy of the foregoing document upon all counsel and parties of record this 9th day of March, 2006, by placing the same in the United States First Class Mail, postage prepaid, at Camp Hill, Pennsylvania, addressed as follows:

Kevin J. McKeon, Esquire
7929 Westpark Drive, Suite 400
McLean, VA 22102-4224

Richard A. Bell, Esquire
318 E. Locust Street
P.O. Box 670
Clearfield, PA 16830-0670

Paul Mannix, Esquire
437 Grant Street, Suite 1624
Frick Building
Pittsburgh, PA 15219-6101

By: _____

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff	*	
vs.	*	NO. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	*	
SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant	*	

SCHEDULING ORDER

NOW, this 10th day of March, 2006, it is the ORDER of this Court that oral argument on Additional Defendant's Motion for Protective Order in the above-captioned matter has been scheduled for ***Wednesday, March 15, 2006 at 11:00 am*** via teleconference. Additional Defendant Sweetland's counsel will coordinate said teleconference among the Court and counsel of record.

It is the responsibility of Additional Defendant Sweetland's counsel to serve certified copy of Scheduling Orders on all parties.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED 5cc Atty Kuba
01/2:26cm (GK) I faxed copy to
MAR 10 2006 Atty Kuba

William A. Shaw
Prothonotary

Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

Clearfield County Courthouse

Fax

To: Jeffrey A. Kubay **From:** William A. Shaw

Fax: 412-391-1464 **Date:** March 10, 2006

Phone: **Pages:** 2

Re: Order of Court, dated 3-10-06 **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•**Comments:**

Prothy —
Please fax a copy
to Atty Kubay.
412 – 391 – 1464
Thank you —
Doris

Namenda
memantine HCl
™

Mar.10 '06 14:34

DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
Mar.10	14:33	1'09	4123911464	G3	02	OK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff	*	
vs.	*	NO. 01-1265-CD
WALLCETON-BOGGS MUNICIPAL AUTHORITY, Defendant	*	
vs.	*	
SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant	*	

AMENDED SCHEDULING ORDER

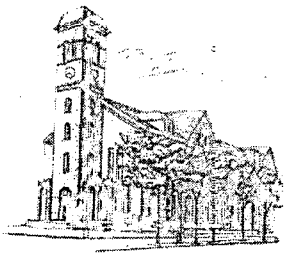
NOW, this 10th day of March, 2006, it is the ORDER of this Court that oral argument on Additional Defendant's Motion for Protective Order (Sweetland Engineering) and Defendant's Motion for Protective Order (Wallacton-Boggs Municipal Authority) are scheduled to be heard on **Wednesday, March 15, 2006 at 11:00 am in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830. Counsel for all parties must be present for the argument. There will not be a teleconference for this argument.**

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED
0/4:00BL
MAR 10 2006
William A. Shaw
Prothonotary/Clerk of Courts

1CC Attys:
Krol, Mumford, Krumbhaar
McKeon
Bell
McTiernan/Mannix, Kubay
Faxed to above 3/10/06
Mailed 3/13/06
GR



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice. this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 3/10/06

_____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

__X__Plaintiff(s)/Attorney(s)

__X__Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

Confirmation Report – Memory Send

Date & Time: Mar-10-2006 05:20pm
Tel line : 8147656089
Machine ID : REGISTER RECORDER

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To	:	17179758124
Number of pages	:	002
Start time	:	Mar-10 05:19pm
End time	:	Mar-10 05:20pm
Pages sent	:	002
Status	:	OK

Job number : 080 *** SEND SUCCESSFUL ***

Fax: 814-765-7659

Courthouse

Fax

To: Rolf E. Kroll, Shawn Mumford, Barry Kronthal
From: William A. Shaw
Fax: (717) 9758124
Date: 3/10/06
Phone:
Pages: 2
Re:
CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

Fax: 814-765-7659

Courthouse

Fax

To: Rolf E. Kroll, Shawn Mumford, Barry Kronthal **From:** William A. Shaw

Fax: (717) 9758124 **Date:** 3/10/06

Phone: **Pages:** 2

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

Clearfield County Courthouse

Fax

To: Kevin J. McKeon **From:** William A. Shaw

Fax: (703) 893-8029 **Date:** 3/10/06

Phone: **Pages:** 2

Re: **CC:**

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•Comments:

Confirmation Report – Memory Send

Date & Time: Mar-10-2006 05:27pm
Tel line : 8147656089
Machine ID : REGISTER RECORDER

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Date & Time	:	Mar-10 05:21pm
To	:	17038938029
Number of pages	:	002
Start time	:	Mar-10 05:22pm
End time	:	Mar-10 05:27pm
Pages sent	:	002
Status	:	OK

Job number : 082 *** SEND SUCCESSFUL ***

Fax: 814-765-7659

Courthouse

Fax

To: Kevin J. McKeon From: William A. Shaw
Fax: (703) 893-8029 Date: 3/10/06
Phone: Pages: 2
Re: CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

Confirmation Report – Memory Send

Date & Time: Mar-10-2006 05:22pm
Tel line : 8147656089
Machine ID : REGISTER RECORDER

Job number	:	081
Date & Time	:	Mar-10 05:20pm
To	:	7659730
Number of pages	:	002
Start time	:	Mar-10 05:20pm
End time	:	Mar-10 05:22pm
Pages sent	:	002
Status	:	OK

Job number : 081 *** SEND SUCCESSFUL ***

Fax: 814-765-7659

Courthouse

Fax

To: Richard A. Bell
From: William A. Shaw
Fax: (814) 769-9730
Date: 3/10/06
Phone:
Pages: 2
Re:
CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

Fax: 814-765-7659

Courthouse

Fax

To: Richard A. Bell **From:** William A. Shaw

Fax: (814) 765-9730 **Date:** 3/10/06

Phone: **Pages:** 2

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•**Comments:**

Confirmation Report – Memory Send

Date & Time: Mar-10-2006 05:26pm
Tel line : 8147656089
Machine ID : REGISTER RECORDER

Job number	:	083
Date & Time	:	Mar-10 05:21pm
To	:	14123911464
Number of pages	:	002
Start time	:	Mar-10 05:25pm
End time	:	Mar-10 05:26pm
Pages sent	:	002
Status	:	OK

Job number : 083 *** SEND SUCCESSFUL ***

Fax: 814-765-7659

Courthouse

Fax

Francis X. McTiernan
Paul Mannix

To: Jeffrey A. Kubay **From:** William A. Shaw

Fax: (412) 391-1464 **Date:** 3/10/06

Phone: **Pages:** 2

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

Clearfield County
Courthouse

Fax

Francis X. McTiernan
Paul Mannix

To: Jeffrey A. Kubay **From:** William A. Shaw

Fax: (412) 391-1464 **Date:** 3/10/06

Phone: **Pages:** 2

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

CA

CONTINENTAL CONSTRUCTION, INC., Plaintiff	: IN THE COURT OF COMMON PLEAS : OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	: CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	: NO. 01-1265-CD : JURY TRIAL DEMANDED
v.	: DEFENDANT'S MOTION FOR PROTECTIVE ORDER
SWEETLAND ENGINEERING, Additional Defendant	: Filed on behalf of Defendant, WALLACETON-BOGGS MUNICIPAL AUTHORITY

: COUNSEL OF RECORD FOR THIS PARTY:

: ROLF E. KROLL, ESQUIRE
: No. 47243

: SHAUN J. MUMFORD, ESQUIRE
: No. 84176

: MARGOLIS EDELSTEIN
: 3510 Trindle Road
: Camp Hill, PA 17011
: 717-975-8114
: 717-975-8124 (fax)

FILED No cc
11:34 BK
MAR 13 2006
William A. Shaw
Prothonotary/Clerk of Courts

CONTINENTAL CONSTRUCTION, INC., Plaintiff	: IN THE COURT OF COMMON PLEAS : OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	: CIVIL ACTION - LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	: NO. 01-1265-CD
Defendant	: JURY TRIAL DEMANDED
v.	:
SWEETLAND ENGINEERING, Additional Defendant	:

PRAECIPE FOR EXPEDITED DISPOSITION OF DEFENDANT'S MOTION FOR PROTECTIVE ORDER

TO THE COURT ADMINISTRATOR:

Expedited Disposition of attached Motion is requested for the following reasons:

1. Said Motion concerns a deposition scheduled for March 21, 2006.

2. The issues raised in the Motion are germane to the preparation for said deposition and compliance with Plaintiff's Notice of Deposition.

Respectfully submitted,

MARGOLIS EDELSTEIN

Rolf E. Kroll
No. 47243
Shaun J. Mumford
No.84176
3510 Trindle Road
Camp Hill, PA 17011
717-975-8114
Attorneys for Defendant, Wallaceton-Boggs

FOR COURT ADMINISTRATION ACTION ONLY

MOTION ASSIGNED TO JUDGE _____

COUNSEL FOR MOVING PARTY NOTIFIED OF JUDICIAL ASSIGNMENT

CERTIFICATE OF SERVICE

I am an authorized representative of Margolis Edelstein, hereby certify that I have served a true and correct copy of the foregoing document upon all counsel and parties of record this 9th day of March 2006, by placing the same in the United States First Class Mail, postage prepaid, at Camp Hill, Pennsylvania, addressed as follows:

Kevin J. McKeon, Esquire
7929 Westpark Drive, Suite 400
McLean, VA 22102-4224

Richard A. Bell, Esquire
318 E. Locust Street
P.O. Box 670
Clearfield, PA 16830-0670

Paul Mannix, Esquire
437 Grant Street, Suite 1624
Frick Building
Pittsburgh, PA 15219-6101

By: _____

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff	*	
vs.	*	NO. 01-1265-CD
WALLCETON-BOGGS MUNICIPAL AUTHORITY, Defendant	*	
vs.	*	
SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant	*	

ORDER

NOW, this 17th day of March, 2006, upone consideration of the Motion of Defendant, Wallaceton-Boggs Municipal Authority ("Authority") it is the ORDER of this Court as follows:

1. Plaintiff is hereby ordered to amend Attachment A to the Deposition Notice for Wallaceton-Boggs Municipal Authority, in particular, Item Nos. 5-10, 12-17, 19-21, 23, 30, 35, 44-46, 50-59 and 61 of Attachment A be stricken and/or revised to avoid seeking legal and/or expert opinions beyond the ordinary ken of the average lay persons that work for the Municipal Authority and to avoid unreasonable burden and expense; and

2. In the event a 4007.1(e) deposition of the Authority moves forward, pursuant to a revised Notice in accordance with paragraph 1 above, the Authority shall have at least forty-five days from the date of said notice to prepare in good faith for said deposition as required by Rule 4007.1(e).

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED
03:03 BY
MAR 17 2006

William A. Shaw
Prothonotary/Clerk of Courts
Copies-see reverse

~~CERT DAA~~

3-17-06 CERT COPIES MAILED TO

~~3:30~~
4:00

McKEON
R. BELL
KROLL
MUNFORD
KRONTHAL
McTIERNAN
MANIX
KUBAL

AND FAXED TO

KROLL,
McKEON
BELL
SEE ATTACHED

FILED
MAR 17 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff	*	
vs.	*	NO. 01-1265-CD
WALLCETON-BOGGS MUNICIPAL AUTHORITY, Defendant	*	
vs.	*	
SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant	*	

ORDER

NOW, this 17th day of March, 2006, upone consideration of the Motion of Defendant, Wallaceton-Boggs Municipal Authority ("Authority") it is the ORDER of this Court as follows:

1. Plaintiff is hereby ordered to amend Attachment A to the Deposition Notice for Wallaceton-Boggs Municipal Authority, in particular, Item Nos. 5-10, 12-17, 19-21, 23, 30, 35, 44-46, 50-59 and 61 of Attachment A be stricken and/or revised to avoid seeking legal and/or expert opinions beyond the ordinary ken of the average lay persons that work for the Municipal Authority and to avoid unreasonable burden and expense; and

2. In the event a 4007.1(e) deposition of the Authority moves forward, pursuant to a revised Notice in accordance with paragraph 1 above, the Authority shall have at least forty-five days from the date of said notice to prepare in good faith for said deposition as required by Rule 4007.1(e).

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAR 17 2006

Attest

Prothonotary/
Clerk of Courts

Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

Clearfield County Courthouse

Fax

To: Rolf Kroll, Shaun Mumford, Barry Knoothal **From:** William A. Shaw

Fax: (717) 975-8124 **Date:** 3/17/06

Phone: **Pages:** 2

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•**Comments:**

*** TRANSMISSION REPORT ***

Mar.17 '06 15:19

DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
Mar.17	15:18	1'11	717 975 8124	G3	02	OK

Fax: 614-466-7659

Courthouse

Fax

To: Kevin J. McKeon **From:** William A. Shaw

Fax: (703) 893-8029 **Date:** 3/17/06

Phone: **Pages:** 32

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•**Comments:**

*** TRANSMISSION REPORT ***

Mar.17 '06 15:04

DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
Mar.17	15:03	1'10	703 893 8039	G3	02	OK

Fax: 814-765-7659

Courthouse

Fax

To: Richard A. Bell **From:** William A. Shaw

Fax: (814) 765-9730 **Date:** 3/17/06

Phone: **Pages:** 32

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•**Comments:**

*** TRANSMISSION REPORT ***

Mar.17 '06 15:07

DATE	START	TIME		PARTNER	MODE	PAGE	RESULT
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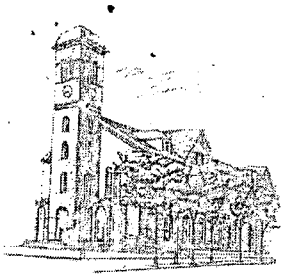


Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 3/17/06

_____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

__X__Plaintiff(s)/Attorney(s)

__X__Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff	*	
vs.	*	No. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	*	
vs.	*	
SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant	*	

FILED
01:05 BT
MAR 17 2006
William A. Shaw
Prothonotary/Clerk of Courts
Copies-See reverse

ORDER

NOW, this 17th day of March, 2006, following argument on the Motion for Protective Order filed on behalf of the Additional Defendant, Sweetland Engineering, it is the ORDER of this Court as follows:

1. Additional Defendant has withdrawn its' objections as set forth in paragraphs 17 and 18 of its' Petition;

2. The Court hereby grants the request for a Protective Order in regard to the information being requested in paragraphs 44, 45, 46 and 61 of Plaintiff's Attachment A to the Amended Notice of Deposition of Sweetland Engineering & Associates, Inc.;

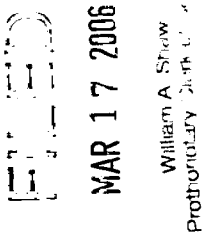
3. The Court hereby determines that the requests as set forth in paragraphs 14 and 15 of Attachment A to the Amended Notice of Deposition are overly broad and grants the request for a Protective Order in regard to the same;

4. The Court hereby grants the request for Protective Order in regard to the first sentence of paragraph 16 of Plaintiff's Attachment A to the Amended Notice of Deposition;

5. The Court hereby confirms the Plaintiff's agreement that Additional Defendant is not obligated to produce the person of former employees of the Additional Defendant for deposition purposes.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge



Fax 3/17/06 per Judge
Ammerman's direction:
McKeon
Bell
McTiernan, Mannix, Kubay

cc: McKeon
Bell
Kroll
Mumford
Kronthal
McTiernan
Mannix
Kubay

Fax: 814-765-7659

Courthouse

Fax

To: Kevin J. McKean **From:** William A. Shaw

Fax: (703) 893-8029 **Date:** 3/17/06

Phone: **Pages:** 3

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•**Comments:**

*** TRANSMISSION REPORT ***

Mar.17 '06 14:32

DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
Mar.17	14:30	1'44	703 893 8039	G3	03	OK

Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

Clearfield County Courthouse

Fax

To: Richard A. Bell **From:** William A. Shaw

Fax: (814) 765-9730 **Date:** 3/17/06

Phone: **Pages:** 3

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

*** TRANSMISSION REPORT ***

Mar.17 '06 14:34

DATE	START	TIME		PARTNER	MODE	PAGE	RESULT
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Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

Clearfield County Courthouse

Fax

Francis X. McTiernan
Paul M. Mannix

To: Jeffrey A. Kubay **From:** William A. Shaw

Fax: (412) 391-1464 **Date:** 3/17/06

Phone: **Pages:** 3

Re: **CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

*** TRANSMISSION REPORT ***

Mar.17 '06 14:38

DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
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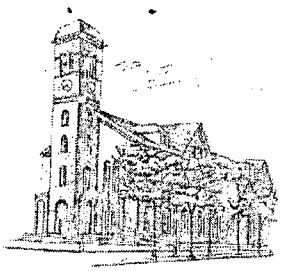


Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 3/17/06

_____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

__X__Plaintiff(s)/Attorney(s)

__X__Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC. :

VS. : NO. 01-1265-CD

WALLACETON-BOGGS :

MUNICIPAL AUTHORITY :

VS. :

SWEETLAND ENGINEERING & :

ASSOCIATES, INC. :

O R D E R

AND NOW, this 15th day of March, 2006, following argument on Additional Defendant's Motion for Protective Order, it is the ORDER of this Court that counsel for Wallaceton-Boggs Municipal Authority have until no later than Friday, March 17, 2006, to provide the Court with proposed order, by fax if desired. Counsel for Plaintiff may respond to the proposed order in the same manner by no later than Tuesday, March 21, 2006.

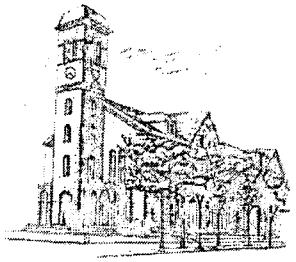
BY THE COURT,

Judge J Cummings

President Judge

FILED
01/31/GK
MAR 17 2006
William A. Shaw
Prothonotary/Clerk of Courts

cc Attys:
K. McKeon
R. Bell
Kroll
Mumford
Kronthal
McTiernan
Mannix
Kubay



Clearfield County Office of the Prothonotary and Clerk of Courts

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__X__Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

Bonnie –
If this is not an
original, please
dispose of.
Thx. Doris F.

FILED
MAR 24 2006
William A. Shaw
Prothonotary/Clerk of Courts
1 CERT TO ATTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc., Plaintiff, v. Wallaceton-Boggs Municipal Authority, Defendant, v. Sweetland Engineering & Associates, Inc., Additional Defendant.	Case No. 01-1265-CD **MOTION FOR CLARIFICATION AND RECONSIDERATION, WITH PROPOSED ORDER** Filed on Behalf of Plaintiff: Continental Construction, Inc. Counsel of Record For This Party:

Kevin J. McKeon (Pa ID# 76232)
Watt, Tieder, Hoffar & Fitzgerald, LLP
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SAVE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

CERTIFICATION PURSUANT TO RULE 208.2(e)

Pursuant to Local Rule 208.2(e), counsel for the Plaintiff has conferred with counsel for the Defendants in order to resolve this matter without Court action, and was successful in reaching agreement with Sweetland on several issues, but unable to reach agreement or compromise with the Authority, as set forth in greater detail in Paragraphs 52 through 62 of this Motion.

DATED: March 23, 2006

Kevin J. McKeon (Pa ID# 76232)
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& Fitzgerald, LLP,
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McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)
kmckeon@wthf.com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

MOTION FOR CLARIFICATION AND RECONSIDERATION

And now comes the Plaintiff, Continental Construction, Inc. ("Continental"), and files the following Motion for Clarification and Reconsideration, and in support thereof states as follows:

INTRODUCTION AND BACKGROUND

1. On or about March 17, 2006, this Honorable Court issued two (2) Orders, one addressing the Motion for Protective Order filed on behalf of Defendant, Sweetland Engineering & Associates, Inc. ("Sweetland Order," attached hereto as Exhibit A), and one addressing the Motion for Protective Order filed on behalf of Defendant, Wallaceton-Boggs Municipal Authority ("Authority Order," attached hereto as Exhibit B)(the two orders being referred to herein as "the Orders").

2. The Motions and Orders arose out of Plaintiff's Deposition Notices Pursuant to Rule 4007.1(e), including the matters listed in Attachment A to each, as directed to Sweetland ("Notice to Sweetland"), and to the Authority ("Notice to the Authority"), respectively.

3. Prior to noticing depositions pursuant to Rule 4007.1(e), Plaintiff had already noticed and conducted a two-day deposition of Robert Bruce, a former employee of Sweetland, which included a high number of objections from counsel for both Defendants. (See, e.g., page 7 of the Depo. of Robert Bruce from June 22, 2005, *noting 120 objections* from Defendants' counsel, included herewith under Exhibit C, and pages 7-8 of the Depo. of Robert Bruce from June 23, 2005, *noting an additional 263 objections* by Defendants' counsel, included herewith under Exhibit D).

4. Based on Plaintiff's experience in the prior deposition, and based on the language of the Orders issued on March 17, 2006, Plaintiff anticipates that future depositions will be impacted by disagreements about the scope of Plaintiff's rights under the Pennsylvania Rules of Civil Procedure, the scope of the limitations created by the Orders dated March 17, 2006, and the scope of the Defendants' affirmative obligations in response to deposition notices pursuant to Rule 4007.1(e).

5. Additionally, while Plaintiff respectfully reserves the right to appeal the March 17 Orders in their entirety, Plaintiff requests that the Court reconsider its decision to restrict Plaintiff's ability to obtain discovery pursuant to Rule 4007.1(e) on Sweetland's Growth Rate and how Sweetland Staffed Similar Projects.

6. Therefore, Plaintiff respectfully requests that the Court clarify and confirm that certain basic principles still apply to discovery moving forward in this case.

7. More specifically, Plaintiff hereby respectfully moves the Court to clarify and/or confirm that:

a. Nothing in either of the Orders limits Sweetland's obligation to produce a witness or witnesses prepared to "give complete, knowledgeable and binding answers" on "matters known or reasonably available to" Sweetland, on all

matters set forth in Plaintiff's Notice to Sweetland, except with regard to Items 14, 15, 44, 45, 46, 61, and the first sentence of 16, in Attachment A thereto.

b. Nothing in either of the Orders limits the Authority's obligation to produce, after at least forty-five (45) days notice, a witness or witnesses prepared to "give complete, knowledgeable and binding answers" on "matters known or reasonably available to" the Authority on all matters set forth in Plaintiff's Notice to the Authority, as long as Plaintiff revises Attachment A "to avoid seeking legal and/or expert opinions beyond the ordinary ken of the average lay persons that work for the Authority and to avoid unreasonable burden and expense."

c. Nothing in either of the Orders limits the Plaintiff's right under Pa. R. Civ. P. 4003.1(c) to ask for and obtain opinion evidence, even those relating to "the application of law to fact," in the event that Sweetland and/or the Authority, in response to Plaintiff's Notices Pursuant to Rule 4007.1(e), designate persons who: (a) are "regular employes" of a party, or (b) have firsthand knowledge of relevant facts, but are *not* "retained or specially employed" by a party.

d. The protection provided by the Orders is limited to Depositions Pursuant to Rule 4007.1(e), and nothing in either of the Orders precludes the Plaintiff from deposing any witnesses in their individual capacity about "any matter, not privileged, which is relevant to the subject matter involved in the pending action," and it "is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably

calculated to lead to the discovery of admissible evidence," including, but not limited to, all of the matters identified in Attachment A to each of Plaintiff's Notices of Depositions Pursuant to Rule 4007.1(e); and

e. Nothing in either of the Orders precludes the Plaintiff from moving *in limine* to preclude the admission of evidence offered after the close of discovery that was not previously produced, but which would have been responsive to Plaintiff's discovery requests, or which is at variance with evidence produced in response to discovery requests.

8. Additionally, Plaintiff also respectfully requests that the Court reconsider and vacate its ruling with regard to Items 44 ("Sweetland's Growth") and 45 ("Staffing Similar Projects") in the Notice to Sweetland.

SCOPE OF DEFENDANTS' OBLIGATIONS IN RESPONSE TO NOTICE PURSUANT TO RULE 4007.1(E)

9. Rule 4007.1(e) of the Pennsylvania Rules of Civil Procedure provides for the taking of a Corporate Designee Deposition, as it provides, in relevant part:

> A party may in the notice . . . name as the deponent a public or private corporation or . . . governmental agency and describe with reasonable particularity the matters to be inquired into and the materials to be produced. In that event, the organization so named shall serve a designation of one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated the matters on which each person will testify. . . . **The person or persons so designated shall testify as to matters known or reasonably available to the organization**.

Pa. R. Civ. P. 4007.1(e)(emphasis added).

10. While there is very little case law construing Pa. R. Civ. P. 4007.1(e), the Explanatory Comment to the Rule indicates that it "is adapted, almost verbatim, from Fed. R. Civ. P. 30(b)(6).

11. In that regard, the Federal Rule for Corporate Designee Depositions is nearly indistinguishable from Rule 4007.1(e), as it provides, in relevant part:

> A party may in the party's notice . . . name as the deponent a public or private corporation or . . . governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. . . . **The persons so designated shall testify as to matters known or reasonably available to the organization**.

Fed. R. Civ. P. 30(b)(6)(emphasis added).

12. Based on the similarity in the language between the two rules, and the dearth of case law construing Rule 4007.1(e), Plaintiff has supplied several federal cases as persuasive, but not binding, authority with regard to the scope and obligation created by a Corporate Designee Deposition Notice.

13. For instance, in Ierardi v. Lorillard, Inc., No. 90-7049, 1991 U.S. Dist. LEXIS 11887, at *4 (E.D. Pa. Aug. 23, 1991)(copy attached hereto as Exhibit E), the court construed the defendant's obligation in response to a Corporate Designee Deposition Notice when the defendant had no current employees with sufficient knowledge to provide the requested information.

14. In Ierardi, the Eastern District of Pennsylvania found that "the defendant [was still] obligated to 'prepare [one or more witnesses] so that they may give **complete, knowledgeable and binding answers on behalf of the corporation.**'" Id. (emphasis added). While the court acknowledged that preparing a designee who lacked personal knowledge was perhaps difficult, it was not an "undue burden," as claimed by the defendant. Id.

15. Accordingly, while the Sweetland Order in this case limits Sweetland's obligation with regard to Item Nos. 14, 15, 44, 45, 46, 61, and the first sentence of 16, in Attachment A to the Notice to Sweetland, nothing in the Sweetland Order otherwise limits Sweetland's obligation

to produce a witness or witnesses prepared to give "complete, knowledgeable and binding answers" on behalf of Sweetland with regard to "matters known or reasonably available to" Sweetland about any and all of the other matters in the Notice to Sweetland.

16. Similarly, while the Authority Order requires Plaintiff to revise and/or strike Item Nos. 5-10, 12-17, 19-21, 23, 30, 35, 44-46, 50-59 and 61 in Attachment A to the Notice to the Authority so as "to avoid seeking legal and/or expert opinions beyond the ordinary ken of the average lay persons that work for the Municipal Authority and to avoid unreasonable burden and expense," nothing in the Authority Order otherwise limits the Authority's obligation to produce a witness or witnesses prepared to give "complete, knowledgeable and binding answers" on behalf of the Authority with regard to "matters known or reasonably available to" the Authority about any and all of the other matters in the Notice to the Authority, following at least forty-five (45) days notice.

SCOPE OF PLAINTIFF'S RIGHT TO SEEK AND OBTAIN OPINION EVIDENCE FROM SWEETLAND

17. With regard to opinion evidence, Pa. R. Civ. P. 4003.1(c) specifically *precludes* objections based on the ground that a deposition question seeks an opinion "that relates to a fact or the application of law to fact," as it provides, in full:

> Except as otherwise provided by these rules, it is not ground for objection that the information sought involves an opinion or contention that relates to a fact or the application of law to fact.

Pa. R. Civ. 4003.1(c). See also the 1989 Explanatory Comment stating that: "Opinions are presently discoverable in Pennsylvania."

18. Based on Rule 4003.1(c), Plaintiff has a right to ask for and obtain opinion testimony, even opinions that relate to "the application of law to fact," during depositions.

19. Additionally, while Rule 4003.5 limits the manner in which a party can obtain "[d]iscovery of facts known and opinions held by an expert . . . acquired or developed in

anticipation of litigation or for trial," it provides no protection of any kind to a "regular employe" of a party.

20. More specifically, the Explanatory Comment to Rule 4003.5 indicates that it only immunizes expert opinions from persons "retained or specially employed" by a party, as it states:

> [Rule 4003.5] applies only to experts "retained or specially employed". A regular employe of a party who may have collected facts, prepared reports and rendered opinions, and who may be qualified as an expert, is not covered by this sub-section and has no immunity from discovery, simply because the party elects not to call him at the trial. He is not an "expert" within the meaning of the Rule; he is simply a witness, an employe of a party.

Pa. R. Civ. P. 4003.5 (Explanatory Comment, 1978).

21. Thus, based on Rules 4003.1(c) and 4003.5, Plaintiff has a right to ask for and obtain opinion testimony, even opinions that relate to "the application of law to fact," when deposing any "regular employe" of the Defendants, or someone who has *not* been "retained or specially employed" by the Defendants.

22. The only exception to this rule is when the designee is "retained or specially employed" by a party, but has no firsthand knowledge of relevant facts. See, e.g., Graham v. I.M.O. Industries, Inc., 16 Pa. D.&C.4th 492, 500 (All. 1992)(discussing the court's conclusion in Feyes v. Gehl, 134 Pitts. L. J. 55 (1985), that Rule 4003.5 "does not protect expert opinions or the parties or their employees because these opinions are likely to be based on the witness's firsthand knowledge of relevant facts and because in that situation the facts and the opinions are interrelated.")(copy attached hereto as Exhibit F).

23. With regard to Sweetland, the only limitation on Plaintiff's right to ask for and obtain opinion testimony, even of opinions on "the application of law to fact," relating to any matter in the Notice to Sweetland other than Nos. 14, 15, 44, 45, 46, 61, and the first sentence of

16, occurs if Sweetland designates a person who *has* been "retained or specially employed" by Sweetland, but whom does *not* have firsthand knowledge of the relevant facts.

24. It is expected that Sweetland will designate regular employees, and if so, according to the Explanatory Comment to Rule 4003.5, they are not entitled to immunize their opinions from discovery, and to the contrary, and pursuant to Rule 4003.1(c), such designees must provide their opinions, even if the opinions relate to the "application of law to fact."

SCOPE OF PLAINTIFF'S RIGHT TO SEEK AND OBTAIN OPINION EVIDENCE FROM THE AUTHORITY

25. With regard to the Authority, the Authority Order, dated March 17, 2006, appears to prohibit the Plaintiff from "seeking legal and/or expert opinions" during the Deposition of the Authority Pursuant to Rule 4007.1(e), *under any circumstances*.

26. Plaintiff respectfully requests that the Court reconsider its ruling because this prohibition not only limits the Plaintiff's rights under Rule 4003.1(c), but also appears to render the language of the Explanatory Comment to Rule 4003.5 meaningless.

27. As quoted above, the Explanatory Comment to Rule 4003.5 only immunizes expert opinions of persons "retained or specially employed" by a party; it does not purport to immunize expert opinions of persons who have *not* been "retained or specially employed," or who *are* "regular employes" of a party.

28. Nevertheless, the Authority Order appears to preclude the Plaintiff from seeking expert opinions regardless of whom the Authority chooses to designate.

29. Accordingly, the Authority Order can now be used preemptively to preclude the Plaintiff from seeking otherwise discoverable facts and/or opinions.

30. More specifically, it is possible that the Authority may choose in advance or during the course of the Deposition Pursuant to Rule 4007.1(e), to designate persons to testify:

(a) who *are* "regular employes" of the Authority, or (b) do have firsthand knowledge of relevant facts, but have *not* been "retained or specially employed" by the Authority.

31. If so, in the absence of the Authority Order, Plaintiff would normally be permitted to seek discovery of facts and opinions from such designees, even those relating to "the application of law to fact," in accordance with Rule 4003.1(c), the Explanatory Comment to Rule 4003.5, and the persuasive opinion in Graham v. I.M.O. Industries, Inc., cited above.

32. Even without the Authority Order, Rule 4003.1(c), Rule 4003.5, and the persuasive authority cited above already create reasonable limitations on Plaintiff's ability to seek "legal and/or expert opinions," in that Plaintiff cannot discover such opinions *unless* the deponent: (a) has firsthand knowledge of the relevant facts, and (b) *was* "retained or specially employed" by the Authority.

33. Because the Authority Order appears to void the Plaintiff's rights pursuant to at least two (2) Rules of Civil Procedure and persuasive authority, and would allow the Authority to act preemptively to preclude the Plaintiff from conducting otherwise permissible discovery, Plaintiff respectfully requests that the Court reconsider its decision to preclude the Plaintiff from seeking "legal and/or expert opinions" under any circumstances, and requests that the Court simply affirm the protections provided by the operation of the Rules of Civil Procedure.

PLAINTIFF'S RIGHT TO SEEK AND OBTAIN DISCOVERY THROUGH PERSONS DEPOSED IN THEIR INDIVIDUAL CAPACITY

34. Neither Defendant requested a Protective Order with regard to all remaining discovery that may yet be conducted in this case, or to entirely bar the Plaintiff from conducting further discovery on any of the matters set forth in Attachment A to each of the Deposition Notices.

35. Language in the Sweetland Order repeatedly states that the Court "grants the request for a Protective Order . . .," but it does not specifically limit the application of the Protective Order to Depositions Pursuant to Rule 4007.1(e).

36. At the same time, Rule 4003.1 clearly affords Plaintiff the broad right to conduct discovery into "any matter, not privileged, which is relevant to the subject matter involved in the pending action," and it "is not ground for objection that the information sought will be inadmissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Pa. R. Civ. P. 4003.1.

37. In that regard, the Orders do not indicate that discovery into any of the matters forth in Attachment A to each of the Notices would run afoul of the standard articulated in Rule 4003.1.

38. Furthermore, the Orders do not reflect that the Plaintiff is in any way barred from pursuing additional discovery into any of the matters set forth in Attachment A to each notice, except if such discovery is sought in the context of a Deposition Pursuant to Rule 4007.1(e).

39. Accordingly, in order to avoid any confusion, Plaintiff respectfully requests that the Court clarify and confirm that the protection provided by the two (2) orders dated March 17, 2006, is applicable only to Depositions Pursuant to Rule 4007.1(e), and not to any other depositions the Plaintiff may elect to take of persons in their individual capacities.

PLAINTIFF'S RIGHT TO MOVE IN LIMINE TO BAR EVIDENCE NOT PRODUCED DURING DISCOVERY

40. Paragraph 5 of the Order states: "The Court hereby **confirms the Plaintiff's agreement** that Additional Defendant is not obligated to produce the person of former employees of the Additional Defendant for deposition purposes." (emphasis added).

41. While Plaintiff agreed that Rule 4007.1(e) did not obligate Sweetland to produce *any* particular person in response to Plaintiff's Notice to Sweetland, Plaintiff never agreed to limit the scope of Sweetland's obligation in response to the Notice.

42. Therefore, to the extent that Paragraph 5 of the Sweetland Order implies that Plaintiff agreed to limit the scope of Sweetland's obligation under Rule 4007.1(e), or waived its right to move *in limine* to bar the introduction of untimely produced evidence, Plaintiff objects.

43. Additionally, to the extent that Paragraph 5 of the Sweetland Order implies that Defendants are free to supply or change evidence after the close of discovery that should have been provide in timely fashion, Plaintiff objects.

44. Based on these objections, Plaintiff requests that the Court confirm that nothing in either of the Orders precludes the Plaintiff from moving *in limine* to preclude the Defendants from admitting evidence or changing evidence, after the close of discovery, which would have been responsive to Plaintiff's discovery requests.

PLAINTIFF'S RIGHT TO SEEK ADDITIONAL DISCOVERY REGARDING SWEETLAND'S RATE OF GROWTH AND THE MANNER IN WHICH SWEETLAND STAFFED SIMILAR PROJECTS

45. Paragraph 2 of the Sweetland Order granted Sweetland's request for a Protective Order in regard to the information being requested in Item Nos. 44, 45, 46 and 61 of Plaintiff's Attachment A to the Notice to Sweetland.

46. Plaintiff respectfully requests that the Court reconsider its ruling, at least with regard to Item Nos. 44 and 45 in Attachment A to the Notice to Sweetland.

47. In deposing one former employee of Sweetland, Plaintiff has already secured testimony that Sweetland had doubled in size during a 6-year period (see page 60 of Depo. of Robert Bruce from June 22, 2005, attached hereto under Exhibit C), and assigned at least 18

different people to perform design work on the Project in question (see page 18 of Depo. of Robert Bruce from June 23, 2005, attached hereto under Exhibit D).

48. Plaintiff contends that Sweetland's rapid growth and the large number of employees who were assigned to the Project were substantial factors in causing the errors and omissions in the Bid and Contract Documents that have been alleged by Plaintiff, and caused the Plaintiff to incur substantial additional costs.

49. Therefore, Plaintiff should be permitted to conduct further discovery with regard to Sweetland's rate of growth and the high number of employees assigned to work on the design of the Project in question, as opposed to other similar projects.

50. These topics are particularly appropriate in the context of a deposition pursuant to Rule 4007.1(e) considering that the rate of Sweetland's growth and the number of employees it typically assigned to similar projects would be issues appropriately directed to Sweetland as a corporation, as opposed to any individual employee.

51. Accordingly, Plaintiff respectfully requests that the Court reconsider its order which effectively voids Sweetland's obligation to produce a corporate designee prepared to testify to "matters known or reasonably available to" Sweetland relating to "Sweetland's Growth" and "Staffing Similar Projects."

STATUS OF DISCUSSIONS
BETWEEN THE PARTIES ON THE ISSUES DESCRIBED ABOVE

52. As set forth in the Certification attached hereto, the Plaintiff has conferred at great length with the Defendants in an effort to limit the issues upon which Court action is needed.

53. In that regard, the Authority has refused to reach agreement or compromise on any of the issues, and opposes this Motion in its entirety.

54. The Plaintiff and Sweetland, however, have been able to find common ground and reach agreement on several issues.

55. For instance, the Plaintiff and Sweetland agree that: "The protection provided by the Orders dated March 17, 2006, is limited to Depositions Pursuant to Rule 4007.1(e), and nothing in either of the Orders precludes the Plaintiff from questioning witnesses deposed in their individual capacity about "any matter, not privileged, which is relevant to the subject matter involved in the pending action," and it "is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence," including, but not limited to, all of the matters identified in Attachment A to each Plaintiff's Notices of Depositions Pursuant to Rule 4007.1(e), except that Sweetland reserves the right to object and/or seek a protective order, based on its contention that Item Nos. 44, 45, 46, and 61 in the Notice to Sweetland are not reasonably calculated to lead to the discovery of admissible evidence, if and when, Plaintiff seeks further discovery on these particular Items through depositions of individuals in their individual capacity."

56. As a result of the agreement between Plaintiff and Sweetland on the language set forth in the previous paragraph, the Proposed Order attached hereto incorporates this agreement verbatim, at Paragraph 4.

57. Additionally, the Plaintiff and Sweetland agree that: "Generally, nothing in either of the Orders dated March 17, 2006, precludes the Plaintiff from moving *in limine* to preclude the admission of evidence offered after the close of discovery that was not previously produced, but which would have been responsive to Plaintiff's discovery requests, or which is at variance with evidence produced in response to discovery requests, but the Defendants believe that evidence at variance with evidence produced in response to discovery requests is more appropriately challenged through cross-examination. Nothing in this paragraph precludes the Defendants from opposing such a motion on its merits and with respect to the particular facts and circumstances surrounding the allegations in such a motion."

58. Again, as a result of the agreement between the Plaintiff and Sweetland on the language set forth in the previous paragraph, the Proposed Order attached hereto incorporates this agreement verbatim, at Paragraph 5.

59. Similarly, the Plaintiff and Sweetland agree on the following statement, except that Sweetland was unwilling to agree to include the phrase, "and binding" in the Proposed Order attached hereto: "Nothing in either of the Court's Orders dated March 17, 2006, limits Sweetland's obligation to produce a witness or witnesses prepared to "give complete, knowledgeable [~~and binding~~] answers" on "matters known or reasonably available to" Sweetland, on all Items set forth in Plaintiff's Notice of Deposition Pursuant to Rule 4007.1(e) directed to Sweetland, except with regard to Items 14, 15, 44, 45, 46, 61, and the first sentence of 16, in Attachment A thereto.

60. Accordingly, the Plaintiff's version of the language in the previous paragraph is set forth in Paragraph 1 of the Proposed Order, but again Plaintiff wants to make it clear that Sweetland does NOT agree to the phrase, "and binding."

61. Aside from the fact that Sweetland and the Authority disagree on the use of the "and binding" phrase in Paragraph 1 of the Proposed Order, they also disagree on: (a) the scope of Plaintiff's right to obtain opinion evidence from Sweetland, and (b) Plaintiff's request for reconsideration of the Court's ruling regarding "Sweetland's Growth" and how it "Staffed Similar Projects."

62. The language proposed by the Plaintiff to resolve these two issues is set forth in Paragraphs 3 and 6, respectively of the Proposed Order.

Accordingly, Continental respectfully requests that this Honorable Court enter the attached proposed Order of Court.

Respectfully submitted,

DATED: March 23, 2006

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rbell@pennswoods.net

Attorney for Plaintiff,
Continental Construction, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction, Inc.,	)	
	)	Case No. 01-1265-CD
Plaintiff,	)	
	)	
v.	)	
	)	
Wallaceton-Boggs Municipal Authority,	)	
	)	
Defendant,	)	
	)	
v.	)	
	)	
Sweetland Engineering & Associates, Inc.,	)	
	)	
Additional Defendant.	)	

ORDER OF COURT

And now, this ___ day of March, 2006, upon consideration of Plaintiff's Motion for Clarification and Reconsideration, it is the ORDER of this Court as follows:

1. Nothing in either of the Court's Orders dated March 17, 2006, limits Sweetland's obligation to produce a witness or witnesses prepared to "give complete, knowledgeable and binding answers" on "matters known or reasonably available to" Sweetland, on all Items set forth in Plaintiff's Notice of Deposition Pursuant to Rule 4007.1(e) directed to Sweetland, except with regard to Items 14, 15, 44, 45, 46, 61, and the first sentence of 16, in Attachment A thereto.

2. Nothing in either of the Court's Orders dated March 17, 2006, limits the Authority's obligation to produce, after at least forty-five (45) days notice, a witness or witnesses prepared to "give complete, knowledgeable and binding answers" on "matters known or reasonably available to" the Authority on all Items set forth in Plaintiff's Notice of Deposition Pursuant to Rule 4007.1(e) directed to the Authority, as long as Plaintiff revises Attachment A

thereto "to avoid seeking legal and/or expert opinions beyond the ordinary ken of the average lay persons that work for the Authority and to avoid unreasonable burden and expense." Nothing herein limits the Authority's right to again move for a protective order in response to future discovery propounded by the Plaintiff.

3. Nothing in either of the Court's Orders dated March 17, 2006, or in the paragraphs above, limits the Plaintiff's right under Pa. R. Civ. P. 4003.1(c) to ask for and obtain opinion evidence, even those relating to "the application of law to fact," in the event that Sweetland and/or the Authority, in response to Plaintiff's Notices Pursuant to Rule 4007.1(e), designate persons: (a) who are "regular employes" of a party, or (b) who have firsthand knowledge of relevant facts, but are *not* "retained or specially employed" by a party .

4. The protection provided by the Orders dated March 17, 2006, is limited to Depositions Pursuant to Rule 4007.1(e), and nothing in either of the Orders precludes the Plaintiff from questioning witnesses deposed in their individual capacity about "any matter, not privileged, which is relevant to the subject matter involved in the pending action," and it "is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence," including, but not limited to, all of the matters identified in Attachment A to each Plaintiff's Notices of Depositions Pursuant to Rule 4007.1(e), except that Sweetland reserves the right to object and/or seek a protective order, based on its contention that Item Nos. 44, 45, 46, and 61 in the Notice to Sweetland are not reasonably calculated to lead to the discovery of admissible evidence, if and when, Plaintiff seeks further discovery on these particular Items through depositions of individuals in their individual capacity.

5. Generally, nothing in either of the Orders dated March 17, 2006, precludes the Plaintiff from moving *in limine* to preclude the admission of evidence offered after the close of

discovery that was not previously produced, but which would have been responsive to Plaintiff's discovery requests, or which is at variance with evidence produced in response to discovery requests, but the Defendants believe that evidence at variance with evidence produced in response to discovery requests is more appropriately challenged through cross-examination. Nothing in this paragraph precludes the Defendants from opposing such a motion on its merits and with respect to the particular facts and circumstances surrounding the allegations in such a motion.

6. Notwithstanding any previous Order, or the first five (5) paragraphs above, Sweetland is obligated pursuant to Rule 4007.1(e) to produce a corporate designee to offer evidence on "matters known or reasonably available to" Sweetland with regard to the rate at which Sweetland grew in and around the time that the Project in question was designed, and how Sweetland staffed similar projects.

_____, J.

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

vs.

No. 01-1265-CD

WALLACETON-BOGGS MUNICIPAL AUTHORITY,
Defendant

vs.

SWEETLAND ENGINEERING & ASSOCIATES, INC.,
Additional Defendant

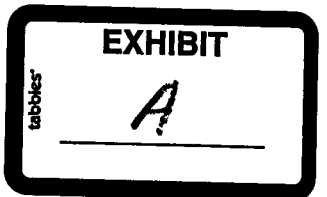
ORDER

NOW, this 17th day of March, 2006, following argument on the Motion for Protective Order filed on behalf of the Additional Defendant, Sweetland Engineering, it is the ORDER of this Court as follows:

1. Additional Defendant has withdrawn its' objections as set forth in paragraphs 17 and 18 of its' Petition;

2. The Court hereby grants the request for a Protective Order in regard to the information being requested in paragraphs 44, 45, 46 and 61 of Plaintiff's Attachment A to the Amended Notice of Deposition of Sweetland Engineering & Associates, Inc.;

3. The Court hereby determines that the requests as set forth in paragraphs 14 and 15 of Attachment A to the Amended Notice of Deposition are overly broad and grants the request for a Protective Order in regard to the same;



4. The Court hereby grants the request for Protective Order in regard to the first sentence of paragraph 16 of Plaintiff's Attachment A to the Amended Notice of Deposition;

5. The Court hereby confirms the Plaintiff's agreement that Additional Defendant is not obligated to produce the person of former employees of the Additional Defendant for deposition purposes.

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

MAR 17 2006

Attest.

Prothonotary/
Clerk of Courts

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., *
Plaintiff *
vs. *
WALLCETON-BOGGS MUNICIPAL * NO. 01-1265-CD
AUTHORITY, Defendant *
vs. *
SWEETLAND ENGINEERING & *
ASSOCIATES, INC., *
Additional Defendant *

I hereby certify this to be a true and attested copy of the original document filed in this case

MAR 17 2006

Attest

Prothonotary/
Clerk of Courts

ORDER

NOW, this 17th day of March, 2006, upone consideration of the Motion of Defendant, Wallaceton-Boggs Municipal Authority ("Authority") it is the ORDER of this Court as follows:

1. Plaintiff is hereby ordered to amend Attachment A to the Deposition Notice for Wallaceton-Boggs Municipal Authority, in particular, Item Nos. 5-10, 12-17, 19-21, 23, 30, 35, 44-46, 50-59 and 61 of Attachment A be stricken and/or revised to avoid seeking legal and/or expert opinions beyond the ordinary ken of the average lay persons that work for the Municipal Authority and to avoid unreasonable burden and expense; and

2. In the event a 4007.1(e) deposition of the Authority moves forward, pursuant to a revised Notice in accordance with paragraph 1 above, the Authority shall have at least forty-five days from the date of said notice to prepare in good faith for said deposition as required by Rule 4007.1(e).

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

EXHIBIT
B

EXHIBIT C

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA
CIVIL DIVISION
* * * * * * * * *

CONTINENTAL CONSTRUCTION, INC.,	*	
Plaintiff	*	Case No.
vs.	*	01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	*	
Defendant	*	
vs.	*	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	*	
Additional Defendant	*	

* * * * * * * *

DEPOSITION OF
ROBERT M. BRUCE
JUNE 22, 2005

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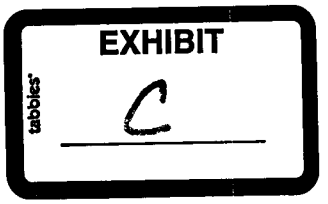

DEPOSITION

OF

ROBERT M. BRUCE, taken on behalf of the Plaintiff herein, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Jacqueline L. Hazlett, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the law offices of Bell, Silberblatt & Wood, 318 East Locust Street, Clearfield, Pennsylvania, on Wednesday, June 22, 2005, at 9:32 a.m.

OBJECTION PAGE

ATTORNEY PAGE

Mannix- 11, 11, 131, 142, 155, 155, 156, 158, 159, 166, 178, 180, 183, 187, 190, 193, 193, 195, 198, 202, 202, 203, 204, 206, 207, 209, 210, 211, 212, 213, 217, 218, 218, 218, 226, 226, 227, 228, 228, 232, 234, 234, 235, 235, 246, 247, 250, 252, 255, 255, 257, 257, 259, 259, 260, 261, 262, 262, 264, 266, 267, 269, 270, 276, 277, 279, 285, 285, 287, 288, 289, 291, 292, 301, 304, 304, 305, 306, 307, 308, 310, 331, 314, 318,

Kroll 125, 129, 157, 190, 193, 202, 203, 206, 208, 209, 210, 212, 213, 219, 227, 228, 228, 234, 235, 235, 235, 246, 247, 250, 252, 261, 266, 286, 292, 301, 304, 304, 306, 308, 311, 316,

number, would have been P.E.s?
A. I don't know.
Q. Well, do you think it was in double digits?
A. I don't' know. I'm sure you could get a data sheet.
Q. Do you have any idea how many employees Sweetland has now?
A. No idea.
Q. Between the time you were hired at Sweetland and the time you left, did the number of employees change?
A. It increased.
Q. By what factor?
A. Double, approximately.
Q. So you were with Sweetland for approximately six years?
A. Yes.
Q. And in that time, Sweetland's workforce approximately doubled?
A. (Indicates yes.)
Q. You're saying yes?
A. Yes. I was thinking. Yes.
Q. For the three projects you

EXHIBIT D

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA
CIVIL DIVISION
* * * * * * * * * *

CONTINENTAL CONSTRUCTION, INC.,	*	Case No.
Plaintiff	*	01-1265-CD
vs.	*	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	*	
Defendant	*	
vs.	*	
SWEETLAND ENGINEERING and ASSOCIATES, INC.,	*	
Additional Defendant	*	

* * * * * * * * *

CONTINUED DEPOSITION OF
ROBERT BRUCE
June 23, 2005

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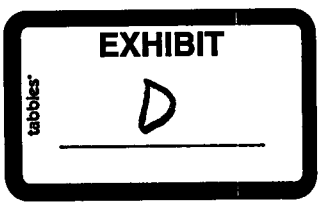


CONTINUED DEPOSITION

OF

ROBERT BRUCE, taken on behalf of the Plaintiff herein, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Rhonda K. Lingle, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the Law Offices of Bell, Silberblatt and Wood, 318 East Locust Street, Clearfield, Pennsylvania, on Thursday, June 23, 2005, beginning at 9:04 a.m.

OBJECTION PAGE

ATTORNEY PAGE

M annix 18, 20, 30, 34, 34, 36, 37, 44, 47, 48, 50, 56, 60, 63, 65, 67, 68, 68, 69, 70, 71, 74, 75, 76, 77, 85, 85, 88, 90, 93, 96, 102, 104, 106, 113, 115, 115, 117, 121, 122, 122, 123, 124, 133, 134, 134, 135, 136, 137, 138, 139, 139, 140, 141, 142, 143, 145, 145, 148, 148, 149, 152, 154, 155, 157, 161, 166, 172, 174, 174, 177, 178, 182, 188, 189, 193, 193, 196, 197, 197, 198, 202, 204, 204, 205, 207, 208, 210, 212, 213, 213, 214, 216, 217, 221, 221, 222, 227, 232, 233, 234, 235, 235, 236, 237, 238, 241, 241, 247, 248, 249, 249, 255, 256, 257, 259, 259, 261, 262, 263, 267, 267, 268, 269, 269, 270, 271, 273, 274, 276, 276, 278, 278, 279, 279, 280, 282, 283, 284, 284, 285, 286, 286, 287, 292, 293, 293, 294, 295, 301, 304, 308, 311, 311, 314, 320, 322, 323, 323, 324, 324, 326, 327, 330, 330, 332, 334, 335, 335, 335

OBJECTION PAGE

ATTORNEY	PAGE
Kroll	56, 60, 63, 65, 67, 68, 69, 70, 71, 74, 76, 88, 90, 93, 103, 115, 115, 117, 124, 138, 142, 149, 154, 156, 173, 173, 174, 181, 185, 186, 188, 192, 196, 197, 198, 201, 202, 202, 204, 204, 205, 207, 208, 212, 213, 213, 215, 216, 220, 220, 221, 222, 228, 234, 236, 237, 248, 249, 256, 257, 259, 259, 260, 262, 267, 267, 268, 269, 273, 274, 276, 277, 278, 279, 280, 281, 283, 284, 285, 286, 287, 293, 294, 296, 298, 304, 314, 322, 332, 336, 340, 341, 342
McKeon	192

A. Pedrazzani.

Q. That would put it at 18 people who Sweetland has -- you carried that actually worked on the design for the project. My question would be, is that Sweetland's normal practice to have 18 different people work on preparing the design for a project?

ATTORNEY MANNIX:

Objection to the form.

A. No.

BY ATTORNEY MCKEON:

Q. Why did it occur on this project?

A. The size of the project, there were two contracts, wastewater treatment facility and wastewater collection conveyance facilities. And also, there was some turnover.

Q. When you say some turnover, what do you mean by that?

A. People left the employment of Sweetland while or during working on the project.

(Exhibit Number 12 marked

EXHIBIT E

Service: **Get by Citation**
Terms: **1991 us dist lexis 11887**

*1991 U.S. Dist. LEXIS 11887, **

PETER IERARDI and ANGELA IERARDI v. LORILLARD, INC., et al.

Civil Action No. 90-7049

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

1991 U.S. Dist. LEXIS 11887

August 20, 1991, Decided

August 23, 1991, Filed

COUNSEL: [*1]

LAURENCE H. BROWN, STEVEN J. COOPERSTEIN, HOWELL K. ROSENBERG, BROOKMAN, ROSENBERG, BROWN & SANDLER, PHILADELPHIA, PENNSYLVANIA, DANIEL G. CHILDS, JOHNSON & CHILDS, PHILADELPHIA, PENNSYLVANIA, FOR PLAINTIFF.

MATTHEW A. WHITE, FRANKLIN POUL, DAVID I. BOOKSPAN, WOLF, BLOCK, SCHORR AND SOLIS COHEN, PHILADELPHIA, PENNSYLVANIA. WALTER L. COFER, WILLIAM S. OHLEMEYER, GARY R. LONG, PATRICK M. SIRRIDGE, DAVID K. HARDY, SHOOK, HARDY AND BACON, KANSAS CITY, MISSOURI, ROBERT V. DELL'OSA, KENNETH C. FRAZIER, DRINKER, BIDDLE & REATH, PHILADELPHIA, PENNSYLVANIA, KIM R. TULSKY, MANN, UNGAR & SPECTOR, PHILADELPHIA, PENNSYLVANIA, ANDREW J. MC ELANEY, JR., STEPHEN J. BLAKE, UTTER, MC CLENNEN & NUTTER, MC CLENNEN & FISH, BOSTON, MASSACHUSETTS, FOR DEFENDANT.

EDWARD J. WILBRAHAM, PHILADELPHIA, PENNSYLVANIA, FOR MOVANT.

JUDGES: Clarence C. Newcomer, United States District Judge.

OPINIONBY: NEWCOMER

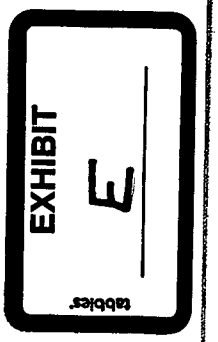
OPINION: MEMORANDUM

Defendant, Hollingsworth & Vose Company (H&V) is presently moving the court to enter a protective order to prevent plaintiffs from deposing any of defendant's current employees regarding H&V's current awareness of the effects of asbestos and to prevent plaintiffs from deposing designees of H&V pursuant to Rule **[*2]** 30(b)(6) of the Federal Rules of Civil Procedure. Additionally, defendant is asking for a clarification of this court's previous order denying co-defendant Lorillard's motion for a protective order. For the reasons that follow, defendant's motion will be denied.

I. Rule 30(b)(6) Designee for Information between 1951-1957

A. Lack of Knowledge

Defendant argues that since H&V has "stated in sworn answers to plaintiffs' interrogatories that no current H&V employee has personal knowledge" (emphasis in original) of any of the information which plaintiffs seek, H&V should not be required to designate any witness to testify pursuant to Rule 30(b)(6). Answers to interrogatories, however, are an inadequate substitute for deposition testimony pursuant to Rule 30(b)(6). Marker v. Union Fidelity Life



Ins. Co., 125 F.R.D. 121, 126. "The general rule is that a claimed lack of knowledge does not provide sufficient grounds for a protective order: the other side is allowed to test this claim by deposing the witness." Amherst Leasing Corp. v. Emhart Corp., 65 F.R.D. 121, 122 (D. Conn. 1974) (footnote omitted). Moreover, an individual employee's lack[*3] of personal knowledge is irrelevant: the organization must provide a witness to "testify as to matters known or reasonably available to the organization." Fed. R. Civ. P. 30(b)(6) (emphasis added).

If none of defendant's current employees has sufficient knowledge to provide plaintiffs with the requested information, defendant is obligated to "prepare [one or more witnesses] so that they may give complete, knowledgeable and binding answers on behalf of the corporation." Marker, at 126 (citations omitted).

B. Contention Interrogatories

Additionally, defendant asks that the court grant a protective order mandating that discovery of the information n1 plaintiffs seek may only be had by means of contention interrogatories. Defendant argues that contention interrogatories are a simpler and more appropriate discovery method. This court notes, however, that "the deposition process provides a means to obtain more complete information and is, therefore, favored." Marker, at 126. Plaintiffs' deposition notices, both of which outline the information plaintiffs seek with reasonable particularity, do not request any information regarding H&V's legal contentions, but rather relate[*4] to H&V's knowledge of facts. Contention interrogatories are neither adequate nor appropriate in this situation. Defendant's request for such an order is therefore denied.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n1 See Plaintiff's Notice of Depositions (Defendant's Exhibit A).

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - -

C. Undue Burden

Defendant claims that it would be "subject to an undue burden" if it were to be required to designate and prepare a witness to testify pursuant to Rule 30(b)(6). The court does not, however, so find. Defendant admits that it possesses records which a designee could study to formulate a response to plaintiffs' inquiries. Although this task may be somewhat difficult, it is clear that if a corporate employee familiar with the structure and organization of the corporation would find this task difficult, plaintiffs, who have no such familiarity, likely would find it impossible.

D. Prejudice to Defendant

Defendant claims that it "would be subject to . . . an unreasonable risk of prejudice" if it were to be bound by the testimony of any witness it would designate pursuant[*5] to Rule 30(b)(6), and that therefore, a protective order should issue. As defendant itself notes, however, "documents can always be interpreted in various ways." This court finds that plaintiffs are entitled to discover the interpretation H&V intends to assert at trial. Moreover, if H&V adequately prepares its designee or designees for the 30(b)(6) deposition, defendant will not suffer prejudice.

E. Unproductivity of 30(b)(6) Testimony

Defendant contends that deposing any of its current employees would be fruitless because "plaintiffs can secure better, more reliable information through other, more productive,

discovery procedures." However, the court does not find defendant's unsubstantiated belief that plaintiffs will not discover new information to merit the imposition of a protective order. See Mitsui & Co. (U.S.A.) Inc. v. Puerto Rico Water Resources Authority, 93 F.R.D. 62, 65 (D. P.R. 1981) ["Rule 30(b)(6) . . . is an additional, supplementary and complimentary deposition process designed to aid in the efficient discovery of facts." citing Advisory Committee Note to Rule 30(b)(6), Atlantic Cape Fisheries v. Hartford, 509 F.2d 577 (1st Cir. 1975).].[*6]

F. Potential Designee

Plaintiffs argue that Dr. Harold Knudson, a retired H&V director who was an H&V employee involved with the development of the cigarette filter at issue in this case, would be an appropriate witness to serve as H&V's 30(b)(6) designee. Defendant also considers Dr. Knudson to be knowledgeable about the subjects regarding which plaintiff seeks binding answers. Defendant argues, however, that because Dr. Knudson has already been deposed at length as a fact witness, plaintiffs should not be allowed to depose him again.

The court notes that defendant is not required to designate a retired employee to serve as a 30(b)(6) designee, because "it cannot be supposed that . . . former employees would identify their interests with those of their former employers to such an extent that admissions by them should be held to bind the employer." Proseus v. Anchor Line, Ltd., 26 F.R.D. 165, 167 (S.D.N.Y. 1960). If defendant is willing to be bound by Dr. Knudson's testimony, however, H&V may agree to produce Dr. Knudson as its 30(b)(6) witness. Defendant's assertion that plaintiffs' deposition of Dr. Knudson as a fact witness makes it unnecessary to depose[*7] him is without merit.

> There are, of course, important advantages in examining a prospective deponent as an officer or managing agent of the adverse party rather than as a witness. Admissions made by the deponent will be binding on his principal. Furthermore, the party employing the deponent must bear both the responsibility for, and the expense of, producing him for examination.

Proseus, at 167.

If defendant is unwilling to be bound by Dr. Knudson's testimony, if defendant would prefer to designate a different witness, or if Dr. Knudson is unwilling to testify on behalf of H&V as a Rule 30(b)(6) deponent, H&V must present another designee to testify concerning the subjects plaintiffs have outlined.

II. Rule 30(b)(6) Designee for Information through the Present

Defendant contends that the information plaintiffs seek regarding whether H&V developed knowledge of the harmful effects of asbestos and whether it ever warned the public about such effects is irrelevant, and that a protective order should issue for this reason. As plaintiffs make clear, however, "what H&V knew and when it knew it is at the heart of the case against it." Plaintiffs are entitled to conduct discovery[*8] regarding this topic, and defendant is required to produce a witness to testify on this subject pursuant to Rule 30(b)(6).

III. Request for Clarification

Defendant requests clarification of this court's April 15, 1991 order denying co-defendant Lorillard's motion for a similar protective order. Defendant suggested interpretation would permit defendants to profess ignorance of information the plaintiffs request during a 30(b)(6) deposition, but then allow H&V to present evidence on the same subject at trial. Defendant's interpretation, however, subverts the purpose of Rule 30(b)(6). Under Rule 30(b)(6), defendant has an obligation to prepare its designee to be able to give binding answers on behalf of H&V. If the designee testifies that H&V does not know the answer to plaintiffs'

questions, H&V will not be allowed effectively to change its answer by introducing evidence during trial. The very purpose of discovery is "to avoid 'trial by ambush.'" Federal Deposit Ins. Corp. v. Butcher, 116 F.R.D. 196, 201 (E.D. Tenn. 1986). The court further notes that Rule 26(e)(2) imposes a duty upon a party to amend its response if:

(A) the party knows that the response**[*9]** was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

An appropriate Order follows.

ORDER - August 23, 1991, Filed

AND NOW, this 20th day of August, 1991, having considered defendant's Motion for a Protective Order, plaintiffs' response thereto, and defendant's reply memorandum, it is hereby ORDERED that defendant's motion is DENIED. Defendant shall promptly produce for deposition one or more witnesses to testify pursuant to Fed. R. Civ. P. 30(b)(6) regarding all subjects outlined in plaintiffs' deposition notices.

AND IT IS SO ORDERED.

Service: **Get by Citation**
Terms: **1991 us dist lexis 11887**
View: Full
Date/Time: Monday, March 13, 2006 - 10:35:21 AM EST

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EXHIBIT F

Westlaw.

16 Pa. D. & C.4th 492

1992 WL 551369 (Pa.Com.Pl.), 16 Pa. D. & C.4th 492

C

Court of Common Pleas of Pennsylvania, Allegheny County.
Graham
v.
I.M.O. Industries Inc.
No. GD 91-3994.

October 15, 1992

*1 **493 Motion to compel discovery.

West Headnotes

Pretrial Procedure ⇨222
307Ak222 Most Cited Cases
Deposition witnesses may not be compelled to provide opinion testimony as to the causes of an explosion that involved a product they manufactured or serviced several years before the explosion where they had no personal knowledge about the causes of the incident.
Donald J. Balsley Jr., Neal R. Cramer and John P. Tierney III, for plaintiffs.

Alan T. Silko, for defendant General Electric Co.

Roger L. Wise, for defendant I.M.O. Industries Inc.

WETTICK, J.

These lawsuits arise out of an accident that occurred in April 1989 at a plant operated by LTV Steel Corp. Plaintiffs' complaints allege that plaintiffs were injured when a centrifugal blower exhauster, known as the no. 5 exhauster, malfunctioned, caught fire and exploded. Defendant I.M.O. Industries Inc., is the successor-in-interest to Delaval Steam Turbine Co., which designed, built and sold the no. 5 exhauster apparently during the period from 1952 to 1954. Defendant General Electric Co. allegedly inspected, cleaned, repaired and tested component parts of this exhauster at its place of business in 1985.

Plaintiffs scheduled the depositions of corporate representatives of both defendants pursuant to Rule 4007.1(e) of the Pennsylvania Rules of Civil Procedure. At both depositions, plaintiffs' counsel asked the designated corporate representatives to express opinions concerning the cause of the 1989 accident. At both depositions, counsel for the party that had produced the witness objected. Plaintiffs' motion to compel these witnesses to provide this opinion testimony is the subject of this opinion and order of court.

IMO designated Richard Salzmann, the manager of product engineering for the Delaval Steam Turbine Division **494 of IMO. IMO relies on the following facts to support its objections.

Mr. Salzmann was not employed by IMO when the exhauster was designed, manufactured, sold or installed. The exhauster has not been in IMO's possession or control since its installation in the early 1950s. Mr. Salzmann was never involved in the maintenance of this exhauster during its 35 years of operation prior to the accident. He will not be called by IMO as an expert witness at trial. He has never seen the exhauster either before or after the accident. He was not asked to and never investigated the cause of the accident. He never discussed the cause of the accident with anyone in his engineering department. To the best of his knowledge, IMO has not determined the cause of the accident. He has never been asked to assist IMO in determining the cause of the accident. He has never expressed an opinion as to the cause of the accident. He has never prepared any report, oral or written, concerning the cause of the accident. To the best of his knowledge, there has never been any investigation by IMO concerning the failure of the no. 5 exhauster.

*2 Mr. Salzmann's sole source of information concerning the nature of the accident and the history of the no. 5 exhauster comes from documents that IMO's counsel had obtained from IMO and LTV. [FN1] Mr. Salzmann also met with IMO's counsel

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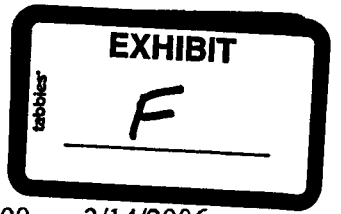

and a specially retained consultant after he was selected by IMO to testify as its corporate **495 representative. At this meeting, Mr. Salzmann would have learned of the opinions of this expert witness, if any were expressed. At this meeting, Mr. Salzmann was not asked to give any opinion as to the cause of the accident.

> FN1. It appears that these documents are available to plaintiffs if they are not already in plaintiff's possession. Also, apparently this witness did not resist any efforts of plaintiffs to learn the nature and contents of the documents.

At his deposition, Mr. Salzmann testified that he is capable of giving an opinion as to the cause of the explosion. His opinion would be based entirely on the information in the previously described documents that he reviewed. He was not asked about his ability to express any opinions concerning the accident based primarily on his experiences with IMO/Delaval products.

General Electric designated Robert L. Coen, a mechanical projects manager at its West Mifflin Branch. Mr. Coen had no recollection as to whether General Electric had repaired a Delaval rotor at its West Mifflin facility. However, from a review of the job orders, he could determine that General Electric repaired two rotor assemblies in July 1985 and that the rotors could have possibly been from the no. 5 exhauster. He described the work that was done for each job order. He described the testing that was conducted and the test results. He answered questions concerning limitations on the testing that was performed and expressed opinions as to whether it would have been prudent to test the rotor in a different fashion. His testimony was based on the information in the job orders and his general knowledge of the services that General Electric performs.

Upon instructions of counsel, he was unwilling to express opinions concerning the design of the rotor (General Electric had nothing to do with its design) or possible causes of the rotor's malfunction that were unrelated to **496 any services that General Electric provided or advice that it gave LTV.

Plaintiffs' discovery requests are governed by my opinions in Williams v. South Hills Health System, 24 Pa. D. & C.3d 206 (1981), and Feyes v. Gehl, 134 Pitts. L.J. 55 (1985). [FN2] In the Williams case, plaintiffs deposed a physician who was in charge of emergency services at the defendant hospital at the time of the deposition but who was not a hospital employee at the time of the alleged malpractice. This witness was asked to express medical opinions relevant to the malpractice claim on the basis of his experience in emergency care procedures. Defendant's counsel instructed him not to testify as to these matters on the ground that any opinions that he expressed were not based on any facts within his personal knowledge but rather on information gained through his medical study and general experience. In the Feyes case, plaintiffs deposed a treating physician who was a defendant in a medical malpractice claim. The defendant physician refused to answer questions involving medical opinions that had no relationship to his treatment of the plaintiff-patient.

> FN2. While all parties also cite Equitable Gas Co. v. Walbrook Insurance Co. Ltd., 133 Pitts. L.J.216 (1984), and Tate v. Philadelphia Savings Fund Society, 1 Pa. D. & C.4th 131 (1987), these opinions involve only the scope of the protections which Pa.R.C.P. 4003.3 affords trial preparation material. In the present case, defendants are not basing their objections to plaintiffs' discovery requests on Rule 4003.3.

*3 The Williams and Feyes opinions recognize that our discovery rules permit discovery seeking information involving an opinion or a contention that relates to a fact or the application of law to fact. Pa.R.C.P. 4003.1(c). Both opinions also recognize that Rule 4003.5's protections **497 from discovery of opinions held by an expert apply only to specially retained experts. However, in both opinions I upheld the objections to discovery seeking the expert opinions of witnesses not protected by Rule 4003.5 where the expert's opinion was not based in any way on his involvement with the subject matter of the litigation. The foundation for my ruling in Williams v. South Hills Health System was a qualified common law privilege that

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protects experts who have no personal information concerning the subject matter of the litigation. The foundation for my ruling in Feyes v. Gehl was Rule 4011's prohibition against discovery that will cause unreasonable annoyance, burden and expense.

In the present case, Mr. Salzmann and Mr. Coen do not have any personal information that would assist them in forming an opinion as to the causes of the explosion. Their opinions would be based solely on information in documents prepared by others. Any experts whom plaintiffs retain will be in the same position as these witnesses to offer factual and opinion testimony concerning the causes of the explosion. Consequently, if Mr. Salzmann and Mr. Coen were not employees of the defendant corporations, plaintiffs would clearly not be allowed to depose these witnesses or any other experts who have no relevant factual information for purposes of having them express opinions as to the causes of the accident based on facts obtained from a review of documents which they did not prepare and their expertise gained through training and experience. Such discovery would be barred under the qualified common law privilege upon which I relied in Williams v. South Hills Health System and Rule 4011's prohibitions against unreasonably burdensome discovery utilized in Feyes v. Gehl.

**498 I do not reach a different result because Mr. Salzmann and Mr. Coen are employees of the defendant corporations. Enterprises engaged in the production of sophisticated products or the delivery of sophisticated services may employ hundreds or even thousands of specially trained persons who would be capable of expressing expert opinions on matters that are the subject of litigation involving their employers even though they did not participate in the subject matter of the lawsuit. [FN3] There is no reason why other parties should be entitled to utilize the expertise of these persons whose corporate responsibilities are unrelated to the subject matter of the discovery. The rationale supporting my opinions in Williams v. South Hills Health System and Feyes v. Gehl bars such discovery. In fact, Williams v. South Hills Health System involved an identical fact situation--the plaintiff sought to compel a physician employed by the defendant hospital with no knowledge of the incident to render opinions based on hospital records and descriptions of the activities which allegedly occurred during plaintiff's treatment.

> FN3. There are many reasons why a party would like to depose these employees of another party. Their opinions may assist the party in understanding and preparing its case. If these opinions are expressed in a deposition recorded by videotape, they may be admissible under Pa.R.C.P. 4017.1(g). If these persons can be required to give expert testimony in a deposition, there is no reason why that cannot be subpoenaed to provide similar testimony in court. Also, while the opinions of these subordinate employees are not binding on the employer, the jury may give more weight to opinions that are adverse to the witnessess' employer because of the witnessess' status as employees of that party.

*4 I recognize that in the present case, unlike Williams v. South Hills Health System, Mr. Salzmann and Mr. **499 Coen are not witnesses whom plaintiffs elected to depose. Pursuant to Pa.R.C.P. 4007.1(e), plaintiffs sent a notice directing the corporate defendants to designate persons to testify on behalf of the corporation. For example, plaintiffs' deposition notice directed General Electric to produce a witness to provide testimony concerning the work performed on the exhauster prior to July 1985, including the testing of the steam rotor. [FN4] Although these witnesses are not officers, directors, or managing agents of the defendant corporations, testimony of a designated subordinate employee may be binding on the corporations.

> FN4. For purposes of this opinion, I assume that questions seeking the cause of the explosion come within the scope of the deposition notices provided pursuant to Rule 4007.1(e).

The testimony which is sought is not whether the corporation has adopted a position as to the cause of the accident or whether the corporation has conducted any investigations as to the cause of the accident and, if so, the nature and results of the

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investigations. In this case, no corporate representatives, acting in their corporate capacities, have expressed any opinions as to the cause of the accident and the corporation has not directed any of its employees to conduct an investigation into the cause of the accident. Furthermore, the corporation does not appear to be in a better position to determine the cause of the accident than any expert whom plaintiffs would retain. Thus, the issue presented by plaintiffs' motion is whether a public or private corporation, partnership, association or governmental agency can be compelled to designate an employee to give opinion testimony as to the cause of plaintiffs' injuries simply because certain employees of the corporation have the expertise to form **500 opinions based solely on information that is equally available to any other expert.

Our rules of discovery do not require the parties to provide expert opinions concerning the ultimate issues of fact in the case at any particular stage of discovery. Plaintiffs in this case, for example, have the same information that is available to Mr. Salzmann or Mr. Coen. Yet plaintiffs cannot be required to provide an expert opinion at this time. There is no justification based on the Pennsylvania Discovery Rules for reaching a different result simply because other parties to the litigation happen to employ persons who are capable of rendering expert opinions on the basis of information about which they have no personal knowledge.

This very issue was the subject of my opinion in Feyes v. Gehl. In this case the plaintiff sought to compel the defendant medical doctor to render expert medical opinions concerning questions unrelated to his treatment of the patient. My opinion rejected plaintiff's argument that Rule 4003.5 implicitly entitled a party to obtain discovery of any expert opinions of experts who are not protected by Rule 4003.5. I concluded that Rule 4003.5 does not protect expert opinions of the parties or their employees because these opinions are likely to be based on the witness's firsthand knowledge of relevant facts and because in that situation the facts and the opinions are interrelated. But when the party or representative of a party capable of rendering an expert opinion is requested to render an opinion on a matter that has no relationship to the witness's involvement in the matter, the policy protecting experts from becoming involuntary expert witnesses is equally applicable.

*5 **501 "The apparent reason for restricting this Rule's [4003.5] protections only to facts and opinions acquired or developed in anticipation of litigation or for trial was to make available through discovery the conclusions and opinions of an expert derived from his or her participation in the matter that is the subject of the lawsuit. Experience under the prior discovery rules (which protected all opinions from discovery) demonstrated that it is impractical to differentiate between factual testimony and opinion testimony when the witness is an expert who participated in the incident. Compare, e.g., Nehls v. Uniontown Hospital, 2 Pa. D. & C.3d 108 (1977); Bastian v. Balka, 25 Bucks L.R. 9 (1973); and Jankowski v. Karakashian, 2 Pa. D. & C.3d 220 (1976).

Also, opinions of an expert witness developed through the witness's participation in the event cannot be equated with opinions of an expert witness based on an attempted recreation of the event. For example, a physician who participates in treating a patient occupies a very different position from a specially retained expert who bases his or her conclusions and opinions on hospital records and the testimony of those who have firsthand knowledge of the patient's condition and the treatment provided. Any conclusions and opinions of a physician who provided treatment will necessarily be interwoven with and influenced by the factual observations made in the course of treatment. See Ferguson v. Redstone Acoustical & Flooring Inc., 21 Pa. D. & C.3d 475, (1981). Since the foundation of any expert opinion is its factual basis, a treating physician's firsthand knowledge of the patient's condition **502 and the treatment provided places this witness in a far better position to render opinions concerning the patient's condition and the nature of treatment and care provided.

For these reasons, the discovery rules require an expert witness with firsthand knowledge of the relevant facts to provide detailed factual and opinion testimony that is not required of a specially retained expert. However, there is no reason to require opinion testimony not required of a specially retained expert in areas in which this witness is not drawing in any manner upon information available to the witness as a

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participant." Feyes v. Gehl, 134 Pitts. L.J. at 56-57.

In summary, I find the following facts to be significant in reaching my result. Mr. Salzmann and Mr. Coen will not be called by the defendant corporations to render any expert opinions. No person within the defendant corporations has firsthand knowledge of the causes of the explosion. The defendant corporations did not direct any employees to conduct any investigations into its causes, and no employees have done so. Mr. Salzmann and Mr. Coen have not conducted any such investigations or expressed any opinions to their employers on this issue. The questions for which the opinions of each witness were sought did not specifically relate to the nature of the products/services of the defendant corporations--these witnesses did not refuse to express opinions concerning defects in or difficulties with the products/services of their employers, opinions concerning their understanding of the quality of their employers' products/services, opinions concerning ways in which their employers' products/services may have contributed to the explosion, or any other **503 opinions or conclusions that would be based on their experiences with their employers' products/services. [FN5] They were simply asked to provide opinion testimony as to the causes of an explosion that involved a product which they manufactured or serviced several years prior to the explosion. These witnesses have no information gained from personal knowledge concerning the causes of the incident. Consequently, they should not be compelled to provide expert testimony under the policy that protects persons from giving expert testimony in private litigation when they had no involvement in the matter.

FN5. See, e.g., Dallas v. Marion Power Shovel Co. Inc., 126 F.R.D. 539 (S.D. Ill. 1989), which allowed a plaintiff to discover the professional opinions of the vice-president of marketing and engineering that were based on his knowledge of the defendant's product. The critical distinction between Dallas v. Marion Power Shovel Co. and the present case is that in the federal case the discovery sought opinions based on facts the witness gained in the course of his employment.

ORDER OF COURT

*6 On October 15, 1992, it is hereby ordered that plaintiffs' motion to compel discovery is denied.

END OF DOCUMENT

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CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of March 2006, a true and correct copy of the foregoing MOTION FOR CLARIFICATION AND RECONSIDERATION, WITH PROPOSED ORDER was delivered via U.S. mail, postage pre-paid, and via e-mail to the following:

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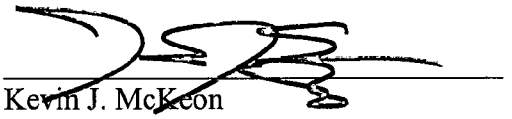

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*Not Admitted in Virginia

March 29, 2006

Via Facsimile Only

The Honorable Fredric J. Ammerman
Clearfield County Court of Common Pleas
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: *Continental Construction, Inc. v. Wallaceton-Boggs Municipal Authority v. Sweetland Engineering & Associates, Inc.*; Docket No. 01-1265-CD

Dear Judge Ammerman:

In brief reply to the Answer filed by the Authority and to the Response filed by Sweetland, please consider the following:

1. Did the Court intend to limit the Plaintiff's ability to seek discovery of persons deposed in their individual capacity? The Plaintiff believes that the Court was issuing Orders pertaining to notices issued pursuant to Rule 4007.1(e), *not* to notices yet to be issued pursuant to any other subpart of Rule 4007.1, for depositions of persons in their individual capacity.

Clarification is necessary because both the Authority and Sweetland have expressed their position that the Orders dated March 17, 2006 bar the Plaintiff from seeking discovery not only pursuant to Rule 4007.1(e), but also of persons deposed in their individual capacity. See Sweetland's Response at ¶ 55 ("the Sweetland Protective Order . . . properly precludes Plaintiff from questioning witnesses deposed in their individual capacity . . . Paragraph 4 of the Sweetland Order with respect to Item No. 44-46, 61 and 16 (first sentence) apply to a corporate designee deposition as well as the deposition of an individual."); see also Authority's Answer at ¶¶ 34-39.

2. Did the Court intend to limit the Plaintiff's ability to seek opinion testimony in depositions, and if so, to what degree? The Plaintiff believes that the Orders do not limit its ability to seek lay opinion testimony at all. As far as expert testimony from Sweetland, the Plaintiff believes that the Orders did not purport to limit Plaintiff's ability to seek expert testimony from regular employees of Sweetland at all. With regard to expert testimony from the Authority, the Plaintiff seeks to clarify that if the Authority decides to change its designee or decides to designate someone who *is* an expert, Plaintiff may rightfully seek expert opinions from such person unless they were "specially retained or employed" by the Authority.

Clarification is necessary because despite admitting the language of Rule 4003.1(c) and the Explanatory Comment (precluding objections to questions seeking "application of law to fact"), Sweetland denies that Rule prohibits objections to questions seeking "expert opinion." (See Sweetland's Response at ¶ 17). Similarly, the Authority admits to the language of the Rule and Comment, but denies that Plaintiff "has a right to ask for and obtain testimony, even opinions that relate to the 'application of law to fact.'" (Compare Authority's Answer at ¶¶ 17, 18 against Pl.'s Motion at ¶¶ 17, 18).

With regard to the scope of immunity provided to opinions of persons "who may be qualified as an expert," both Sweetland and the Authority are similarly oblique in their comments. Sweetland admits the language of the Explanatory Comment to Rule 4003.5 (the Rule "applies only to those 'retained or specially employed'."), but denies that it protects only those "retained or specially employed" by Sweetland. (See Sweetland's Response at ¶ 20). The Authority even goes so far as to *deny even the language* of the Explanatory Comment. (See Authority's Answer at ¶¶ 19-20).

3. Rule of Evidence 701 and Rule of Civil Procedure 4003.3 are not applicable to the issues involved in Plaintiff's Motion. The Authority relies heavily on Pa. R. E. 701, but that rule provides a standard for admissibility of lay witness opinion testimony *at trial*, not to discovery of opinions in discovery. Similarly, Rule 4003.3 applies only to discovery of trial preparation material, but Plaintiff is not seeking any trial preparation material.

4. The standard expressed in Ierardi is not unique to the factual circumstances of that case. The Authority attempts to distinguish Ierardi because it involved a "major corporation," with "technical expertise," and "a specific question." The Authority, however, fails to offer any precedent for the notion that "community-minded volunteers" get a free pass from providing "complete, knowledgeable and binding answers" in a corporate designee-type deposition. If the Court intends to create that precedent, the Plaintiff must object and respectfully reserves its right to appeal that ruling. The "complete, knowledgeable and binding answers" standard is regularly applied (see cases cited in Ierardi), while Plaintiff should even be entitled to "'discover the interpretation [the defendant] intends to assert at trial.'" (See Mellon Bank, N.A. v. Bank of Mid-New Jersey, 1992 WL 80800, *1 (E.D. Pa. 1992)(bracketed phrase in original)(copy attached hereto).

We appreciate the Court's continuing attention to this matter.

Very truly yours,

WATT, TIEDER, HOFFAR & FITZGERALD, LLP

Kevin J. McKeon

Enclosure

cc: Paul M. Mannix, Esq.; Jeffrey A. Kubay, Esq. (via e-mail only)
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Continental Construction, Inc.

Westlaw.

Not Reported in F.Supp., 1992 WL 80800
(Cite as: Not Reported in F.Supp.)

C
Not Reported in F.Supp., 1992 WL 80800
Briefs and Other Related Documents
Only the Westlaw citation is currently available.
United States District Court, E.D. Pennsylvania.
MELLON BANK, N.A.
v.
BANK OF MID-JERSEY et al.
Civ. A. No. 91-3142.

April 14, 1992.

Edward I. Swichar , Blank, Rome, Comisky & McCauley, Philadelphia, Pa., for Mellon Bank, N.A.
William H. Ewing , Regina A. Vogel , Philadelphia, Pa., Jack L. Kolpen , Hill, Wallack & Masanoff, Princeton, N.J., for Bank of Mid-Jersey.
Deena Jo Schneider , Schnader, Harrison, Segal & Lewis , Alan S. Grodnitzky , Dilworth, Paxson, Kalish & Kauffman , Philadelphia, Pa., Price O. Gielen , Neuberger, Quinn & Gielen, P.A. , Baltimore, Md., Warren L. Dennis , Proskaur, Rose, Goetz & Mendelsohn, Washington, D.C., for Banco Del Sempione.

MEMORANDUM

M. FAITH ANGELL, United States Magistrate Judge.
***1** Plaintiff Mellon Bank ("Mellon") filed this Motion for a Protective Order to prohibit Defendant Banca del Sempione ("BDS") from taking the deposition of Richard M. Thomas, a Mellon vice-president, and of Mellon Bank pursuant to Rule **30(b)(6)** of the Federal Rules of Civil Procedure. Mellon contends the deposition notice directed to Mr. Thomas is unnecessary because Mr. Thomas has no personal knowledge of relevant issues, and the Rule **30(b)(6)** notice is designed to annoy and harass Mellon and is unduly burdensome and will create great expense. FN1

I must reject these contentions, for two main reasons. First, Mellon filed this action seeking the Court's aid in determining the rights and obligations of the respective parties. As plaintiff, Mellon cannot now claim an exemption from discovery. The queries posed by BDS relate to the counter-claims against Mellon FN2 as well as the allegations made by Mellon as plaintiff. I believe the information sought by BDS is relevant to establishing the rights and obligations of each party, as well as to the counter-claims raised by BDS.

Second, I find BDS's reliance on *Ierardi v. Loritlard, Inc.*, No. 90-7049, 1991 U.S.Dist. LEXIS 11887 (E.D.Pa. Aug. 20, 1991), persuasive. Judge Newcomer ruled in the *Ierardi* case:

> Answers to interrogatories .... are an inadequate substitute for deposition testimony pursuant to Rule **30(b)(6)**. *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126. 'The general rule is that a claimed lack of knowledge does not provide sufficient grounds for a protective order: the other side is allowed to test this claim by deposing the witness.' *Amherst Leasing Corp. v. Emhart Corp.*, 65 F.R.D. 121, 122 (D.Conn.1974) (footnote omitted). Moreover, an employee's lack of personal knowledge is irrelevant: the organization must provide a witness to 'testify as to matters known or reasonably available to the organization.' F.R.Civ.P. **30(b)(6)**.

Ierardi, 1991 U.S.Dist. Lexis at *2. Judge [illegible] ruled that if no current employee [illegible] the organization [illegible] was obligated to prepare [illegible] so that they may give complete knowledge and binding answers on behalf of the corporation. *Marker*, 125 F.R.D. at 126. Therefore, it is Mellon's responsibility to prepare witnesses to respond to BDS's requests. This preparation should eliminate the great expense and burden that concerns Mellon.

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In addition, while Mellon claims Mr. Thomas has no personal knowledge of the matters in question and that the documents speak for themselves, I believe BDS is entitled to test Mellon's contentions by asking Mr. Thomas directly. BDS may, as the Court stated in *Ierardi*, "discover the interpretation [the defendant] intends to assert at trial." U.S.Dist. LEXIS at *4.

Finally, [redacted]

*2 An appropriate order will be issued.

FN1. On April 8, 1992, counsel for BDS called my office to request an expedited ruling on this motion, since the depositions are scheduled for April 22 and 23. Upon review of the motion, I agreed to expedite my ruling. Additional discovery motions referred to me pursuant to 18 U.S.C. § 636 continue to be held under advisement.

FN2. As counsel for Banca del Sempione points out, Mellon failed to disclose in its motion that it is named by BDS in counterclaims.

E.D.Pa.,1992.
Mellon Bank, N.A. v. Bank of Mid-Jersey
Not Reported in F.Supp., 1992 WL 80800

Briefs and Other Related Documents (Back to top)

• 2:91cv03142 (Docket) (May. 16, 1991)

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WALLACETON-BOGGS MUNICIPAL AUTHORITY

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
v.	CIVIL ACTION – LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant,	NO. 01-1265-CD
v.	
SWEETLAND ENGINEERING, Additional Defendant.	JURY TRIAL DEMANDED

ANSWER TO MOTION FOR CLARIFICATION AND RECONSIDERATION OF DEFENDANT, WALLACETON-BOGGS MUNICIPAL AUTHORITY

AND NOW, comes Defendant, Wallaceton-Boggs Municipal Authority ("Wallaceton-Boggs"), by and through its counsel, Margolis Edelstein, to answer the Motion for Clarification and Reconsideration and in support thereof avers the following:

I. INTRODUCTION AND BACKGROUND

1. Admitted. It is admitted that on or about March 17, 2006,this Honorable Court issued two (2) Orders. It is significant that these Orders followed more than an hour-long conference of counsel pursuant to Local Rule 208.2(e) which itself followed research and analysis of all of the applicable Rules of Civil Procedure, including Pennsylvania Rule of Civil Procedure 4007.1(e). Further, these Orders were issued after extended argument

before this Honorable Court and after Briefs were filed by both Sweetland and Wallaceton-Boggs.

2. Denied as stated. The Motions and Orders arose from the need to preclude Plaintiff from misusing Rule 4007.1(e) by requiring the Authority to be subject to questions and legal implications not contemplated by Rule 4007.1(e). Wallaceton-Boggs' Motion also arose from the concern that Plaintiff's Deposition Notice and Attachment A thereto would require an unreasonable investigation, burden and expense.

3. Denied. Wallaceton-Boggs denies that the number of objections was "high" relative to the questions that were being asked. It is significant in this regard that the deposition in question took the balance of the working day and consumed 349 pages on Day One and an additional 346 pages on Day Two. Many of the objections at issue regarded interpretation of the contract which is principally a matter of law for the Court, involved speculation or were unreasonably vague and misleading. Moreover, most of the objections were joined by both Defendants' counsel. Thus, the inference that counsel for Defendants interposed an unreasonably high number of objections is specifically denied.

4. Admitted in part and denied in part. It is admitted that the scope of the Order will impact the extent of the disagreements amongst counsel. It is submitted that if the Court grants the Motion for "Clarification," more disagreements will occur. As discussed below, Plaintiff's attempt to misuse Rule 4007.1(e) as to the Authority will cause undue burden, expense and confusion to the detriment of all parties involved and particularly to Wallaceton-Boggs.

5. Denied. These allegations of Plaintiff's Motion for Clarification and

Reconsideration constitute conclusions of law which are both factually and legally incorrect and strict proof is demanded at trial.

6. Denied. It is respectfully submitted that the Court's original Order of March 17, 2006, is clear. If Plaintiff's Motion is granted, it will result in more disagreements about the scope of Plaintiff's rights under the Pennsylvania Rules of Civil Procedure and the scope of the limitations created by the Orders of March 17, 2006. Plaintiff's Motion for "Clarification," in its totality, asks this Court to place its imprimatur on various portions of the Order taken in isolation in a piecemeal fashion, and apply this interpretation to various Rules of Civil Procedure, which are likewise selected in a piecemeal fashion. Moreover, such an Order would be in the nature of an advisory opinion and will interject confusion into an otherwise clear, correct and fair ruling with respect to the protective Orders already filed, briefed and ruled upon. Finally, paragraphs 7(b) through (e) improperly and unnecessarily endeavor to interject Plaintiff's interpretation of the Court's already clear Order. To the extent that Plaintiff correctly recites the Court's Order, the Motion adds nothing to the further resolution of the case. To the extent that the Motion adds additional obligations to any of the parties, it is improper.

7. Wallaceton-Boggs notes the following defects in subparagraphs (a) through (e) of paragraph 7:

a. To the extent this subparagraph correctly cites this Court's March 17th Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied.

b. To the extent this subparagraph correctly cites this Court's March 17th

Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied.

c. To the extent this subparagraph correctly cites this Court's March 17th Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied. By way of further answer, this subparagraph incorrectly articulates this Honorable Court's Order and the applicable law. Specifically, Pennsylvania law is clear that lay testimony is inappropriate where it involves skill and training beyond that possessed by the ordinary lay person. See, Pa.R.E. 701. Moreover, opinion testimony is further protected by Rule 4003.3 that protects the representative of a party from disclosing "his or her mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics." In this complex construction case where the heart of the case involves interpretation of the contract which involves issues of law mixed with engineering expertise, all of which are beyond the ken of the average lay persons that make up the Authority, the Court's original Order of March 17, 2006, is appropriate, fair and equitable. This subparagraph would subvert that Order resulting in inappropriate, burdensome and oppressive questions being directed to Authority members.

d. To the extent this subparagraph correctly cites this Court's March 17th Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied. Moreover, this paragraph is vaguely susceptible to

multiple interpretations, is based upon insufficient facts and is therefore inappropriate.

e. To the extent this subparagraph correctly cites this Court's March 17th Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied. By way of further answer, this subparagraph requests this Court to place its imprimatur on motions in limine which will, by necessity, stand or fail of their own weight once filed.

8. Denied. The Court has already ruled after extensive argument and briefing on the issues of Sweetland's Growth and staffing of similar projects, and accordingly, no "clarification" of this Order is required.

II. SCOPE OF DEFENDANT'S OBLIGATION IN RESPONSE TO NOTICE PURSUANT TO RULE 4007.1(e)

9-11. Admitted.

12. Admitted in part and denied in part. It is admitted that Plaintiff has supplied this Court with several Federal cases. It is specifically denied that these are persuasive for the proposition asserted by Plaintiff.

13. Denied. Plaintiff's reliance upon *Ierardi v. Lorillard, Inc.*, No. 90-7049, 1991 U.S. Dist. LEXIS 11887, (E.D. Pa. Aug. 23, 1991), a copy of which is attached hereto as Exhibit "A," demonstrates Plaintiff's misuse of Pa. R.C.P. No. Rule 4007.1(e). Specifically, *Ierardi* involved a major corporation with obvious technical expertise that was endeavoring to avoid answering a specific question that went to the heart of Plaintiff's case. In such a case, Plaintiff was entitled to use the Federal counterpart to

Rule 4007.1(e) to avoid being ambushed at trial. Specifically, in *Ierardi*, the defendant manufactured a cigarette filter that used asbestos. As of the date of the decision, August 20, 1991, the defendant maintained the position that it had no employees with personal knowledge of the effects of asbestos. The court observed that "what [the defendant] knew and when it knew it is at the heart of the case against it." Accordingly, the plaintiff's use of the federal counterpart to 4007.1(e) was appropriate. The topic area was limited, was central to plaintiff's case, was not readily ascertainable by plaintiff by other means, and thus, plaintiff was entitled to avoid ambush at trial. The precisely opposite situation exists in the instant case where Plaintiff's discovery requests do not go to the heart of the case, but instead, in an overly-broad and far reaching manner, seek all information having anything to do with the case. This is particularly inappropriate where the Authority members bear none of the particular expertise that the manufacturer of a cigarette filter using asbestos might have. Thus, Plaintiff's reliance upon *Ierardi* is misplaced.

14. Denied. The fact that the *Ierardi* court found that it was not an "undue burden" upon defendant was a fact specific finding in that case. Certainly, a manufacturer utilizing asbestos products should know, by 1991, what the potential effects of asbestos are. It could certainly not claim ignorance of that fact and then provide contrary testimony at trial. Here, Plaintiff is endeavoring to use the very same rule to disclose every possible needle in a haystack involving thousands upon thousands of documents from a group of community-minded volunteers who lay no similar claim to expertise of any kind. The burden, therefore, is extreme; the expense is extreme; and the

unfairness to the Authority is palpable.

15-16. Denied. To the extent this subparagraph correctly cites this Court's March 17th Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied.

III. SCOPE OF PLAINTIFF'S RIGHT TO SEEK AND OBTAIN OPINION EVIDENCE FROM SWEETLAND

17. Admitted.

18. Denied. This paragraph taken in isolation misapprehends Plaintiff's designs in the instant case. The contract at issue is long and complex. It incorporates specifications that are even longer and more complex. Moreover, the construction of an insurance policy is a matter of law for the Court. It is not an application of law to fact but rather often a pure conclusion of law. Moreover, interpretation of the contract under the facts of this case often involves engineering and construction expertise that render such questions highly problematic at best. This Honorable Court's March 17th Opinion fairly recognizes these complications and limits Plaintiff's inquiries to the facts within the ken of the ordinary lay people that work for the Authority.

19-20. Denied. These allegations of Plaintiff's Motion for Clarification and Reconsideration constitute conclusions of law which are both factually and legally incorrect and strict proof is demanded at trial.

21. Denied. Paragraph 18 is incorporated herein by reference. Moreover, nothing in this paragraph mentions the prohibitions contained in Pa.R.C.P. No. 4003.3 that "discovery shall not include disclosure ... from a [parties] mental impression, conclusions

or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics." Questions regularly ran through the deposition of Mr. Bruce concerning the obligations that various parties had under the contract and whether those obligations were fulfilled. Such broad sweeping questions are beyond the ken of the lay people Authority and yet, under Plaintiff's construction of 4007.1, if an Authority member does not have an affirmative answer to such a question, no contrary testimony could be elicited at trial. Moreover, Plaintiff fails to mention Pa.R.E. 701 which provides, as follows:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness, helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Thus, Plaintiff's interpretation of the law in this regard is incorrect and unfair, especially as applied to Wallaceton-Boggs. Under this Rule, the objectionable areas of inquiry discussed above will not be admissible evidence from Authority members. Moreover, the basis for the lack of admissibility of such opinions centers upon the lack of expertise and technical knowledge possessed by the Authority members. These shortcomings are no less prevalent or important in the discovery process. The lack of technical expertise that renders the opinions sought by Plaintiff inadmissible, also make it clear that the discovery of such opinion is not reasonably calculated to lead to the discovery of admissible evidence. Accordingly, Plaintiff's assertions here fail to take into account the complexity of this litigation, the identity of the deponents and body of law surrounding

lay witness opinions.

22. Denied. This paragraph constitutes a conclusion of law which is legally incorrect and requires no further responsive pleading.

23. Denied. Paragraph 21 hereof is incorporated herein by reference as is set forth at length.

24. Paragraph 21 herein is incorporated herein by reference. Plaintiff's reliance on Nos. 4003.5 and 4003.1 is the only applicable Rules of Civil Procedure in this regard is incorrect.

IV. SCOPE OF PLAINTIFF'S RIGHT TO SEEK AND OBTAIN OPINION EVIDENCE FROM THE AUTHORITY

25. This paragraph constitutes a conclusion of law to which no responsive pleading is required Moreover, Plaintiff's characterization of the March 17, 2006 Order is precisely the problem with Plaintiff's Motion on the whole.

26. Denied. Wallaceton-Boggs respectfully submits that a reconsideration of this Honorable Court's prior Order of March 17, 2006, would unfairly confuse issues that were reasonably clear.

27. Denied. This paragraph constitutes conclusion of law to which no responsive pleading is required.

28. Denied. The Authority has already advised Plaintiff of who it intends to designate, if necessary. This individual is not an expert witness nor is she a lawyer. This witness was identified before the Court and counsel. Accordingly, this paragraph has no bearing on the actual facts of this case.

29. The Order pertaining to the Authority is an incorrect statement of the law as applied to the pertinent facts and does not preclude the seeking of discoverable facts or opinions.

30. Admitted.

31. Denied. This paragraph ignores the fact that none of the Authority members are engineers and none are attorneys. The opinions relevant to this interpretation of the contract and to the construction of this year long project necessarily involve scientific, technical and specialized knowledge regarding construction, engineering, contract interpretation and the law. Moreover, they involve a huge burden and expense in collecting, organizing and reviewing thousands of pages of documentation, which are equally available to the Plaintiff. Accordingly, under the Pennsylvania Rules of Evidence, Plaintiff would not be entitled to such testimony nor would same ever be admissible. See, Pa.R.E. 701. In *Graham v. I. M. O. Industries, Inc.*, 16 Pa. D & C. 4th 492, 500 (1992), the Court addressed employees that possessed specialized knowledge permitting them and enabling them to testify as to complicated technical opinions. Thus, this case is not persuasive given the facts of the instant case.

32. Denied. This paragraph contains conclusions of law which are legally incorrect.

33. Denied. Plaintiff's piecemeal selection of individual Rules of Civil Procedure to the exclusion of others and to the exclusion of the Rules of Evidence and the case law pertaining to the use of opinion testimony of lay witnesses that is accepted in Pennsylvania and across the country, explains why it reaches the erroneous conclusion

set forth in the instant Motion. Plaintiff's failure to cite Pennsylvania Rule of Evidence 701 and Pa.R.C.P. No. 4003.3 demonstrate the error in Plaintiff's reasoning. Moreover, Plaintiff's approach to the Motion for "Clarification" is equally flawed by taking individual portions of the Opinion and characterizing them in a vacuum without the benefit of the other Rules of Civil Procedure, Evidence or even a consideration of the witness that would deliver the proposed testimony.

V. PLAINTIFF'S RIGHT TO SEEK AND OBTAIN DISCOVERY THROUGH PERSONS DEPOSED IN THEIR INDIVIDUAL CAPACITY

34. Denied. Neither Defendant has had occasion to address any effort by Plaintiff to conduct further discovery on the matter set forth in Attachment A and thus, no objection has attained at this juncture.

35-38. Denied. These paragraphs constitute a conclusion to which no responsive pleading is required.

39. Denied. This paragraph constitutes a conclusion to which no responsive pleading is required. By way of further answer, much of the logic and reasoning applicable to the defects in Plaintiff's position with regard to Rule 4007.1(e) deposition is also applicable to depositions of Authority members taken in their individual capacity.

VI. PLAINTIFF'S RIGHT TO MOVE IN LIMINE TO BAR EVIDENCE NOT PRODUCED DURING DISCOVERY

40. Admitted.

41. Denied. After reasonable investigation, Wallaceton-Boggs is without

information sufficient to form a belief as to the truth of the averments of this paragraph and same are therefore denied.

42-43. The allegations of this paragraph state conclusions of law to which no responsive pleading is required and same are therefore denied.

44. The allegations of this paragraph state conclusions of law to which no responsive pleading is required and same are therefore denied. By way of further answer, Paragraphs 41 through 44 are premature. Plaintiff has the right to file Motions in Limine in accordance with the Pennsylvania Rules of Civil Procedure and the Pennsylvania Rules of Evidence. At that time, the merit of such Motions can be addressed by the Court.

VII. PLAINTIFF'S RIGHT TO SEEK ADDITIONAL DISCOVERY REGARDING SWEETLAND'S RATE OF GROWTH AND THE MANNER IN WHICH SWEETLAND'S STAFFED SIMILAR PROJECTS

45-51. These paragraphs are directed to Additional Defendant and accordingly, no responsive pleading is required thereto.

VIII. STATUS OF DISCUSSIONS BETWEEN THE PARTIES ON THE ISSUES DESCRIBED ABOVE

52. Admitted in part and denied in part. It is admitted that Plaintiff has expended great effort in seeking clarification and reconsideration. It is denied that Plaintiff has expended great effort in limiting the issues upon which court action is needed.

53. Denied. Wallaceton-Boggs has entreated and engaged the Plaintiff in extended discourse in an effort to reach compromise. However, as set forth above, the Authority

opposes both the piecemeal manner in which Plaintiff's endeavor to dissect and interpret this Honorable Court's March 17th Order as well as the conclusions reached by Plaintiff through the process of isolation and dissection. Accordingly, Wallaceton-Boggs is constrained to oppose the Motion in its entirety rather than give the Court the impression that Wallaceton-Boggs agrees with either the need to alter the Court Order originally issued or the manner in which Plaintiff has endeavored to alter it.

54. Denied. After reasonable investigation, Wallaceton-Boggs is without knowledge or information sufficient to form a belief as to the alleged agreement contained herein and accordingly, no responsive pleading thereto is required.

56. Denied. After reasonable investigation, Wallaceton-Boggs is without knowledge or information sufficient to form a belief as to the truth of the allegation in this paragraph and accordingly, no responsive pleading thereto is required. By way of further answer, the alleged agreement set forth herein is premature.

57. Denied. After reasonable investigation, Wallaceton-Boggs is without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein paragraph and accordingly, no responsive pleading thereto is required.

58-60. Denied. After reasonable investigation, Wallaceton-Boggs is without knowledge or information sufficient to form a belief as to the truth of the allegation in this paragraph and accordingly, no responsive pleading thereto is required. By way of further answer, the alleged agreement set forth herein is premature.

61. Admitted in part and denied in part. It is admitted that Wallaceton-Boggs disagrees with Plaintiff concerning the items listed in this paragraph. It is denied that

these are the only disagreements between Plaintiff and Wallaceton-Boggs as it pertains to the current discovery dispute.

62. Admitted.

Respectfully submitted,

MARGOLIS EDELSTEIN

Date: 3/29/06

By: _____

ROLF E. KROLL, ESQUIRE
PA. Attorney I.D. No. 47243
Attorneys for Defendant,
WALLACETON-BOGGS MUNICIPAL AUTHORITY

3510 Trindle Road
Camp Hill, PA 17011
(717) 975-8114

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing ANSWER TO MOTION FOR CLARIFICATION AND RECONSIDERATION OF DEFENDANT, WALLACETON-BOGGS MUNICIPAL AUTHORITY, on all counsel of record by placing the same in the United States mail at Camp Hill, Pennsylvania, first-class postage prepaid, on the 30th day of March, 2006, and addressed as follows:

VIA FAX: 703-893-8029 on 3/29/06
Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald
8405 Greensboro Drive, Suite 100
McLean, VA 22102

VIA FAX: 412-391-1464 on 3/29/06
Richard A. Bell, Esquire
Bell, Silberblatt & Wood
318 E. Locust Street
P.O. Box 670
Clearfield, PA 16830-0670

VIA FAX: 814-765-9730 on 3/29/06
Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
437 Grant Street, Suite 1624
Pittsburgh, PA 15219-6101

MARGOLIS EDELSTEIN

By: _____
JoAnn E. Nelson, Secretary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC., PLAINTIFF, vs. WALLACETON-BOGGS MUNICIPAL AUTHORITY, DEFENDANT, vs. SWEETLAND ENGINEERING & ASSOCIATES, INC., ADDITIONAL DEFENDANT. ***JURY TRIAL DEMANDED***	CIVIL DIVISION NO. 01-1265-CD **RESPONSE TO MOTION FOR CLARIFICATION AND RECONSIDERATION** File on behalf of Additional Defendant: **SWEETLAND ENGINEERING & ASSOCIATES, INC.** COUNSEL OF RECORD FOR THIS PARTY: PAUL M. MANNIX, ESQUIRE PA ID NO. 76225 JEFFREY A. KUBAY, ESQUIRE PA ID NO. 76378 WAYMAN, IRVIN & MCAULEY, LLC FIRM #583 1624 FRICK BUILDING 437 GRANT STREET PITTSBURGH, PA 15219 412-566-2970 (PHONE) 412-391-1464 (FAX)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
	)	
	)	NO. 01-1265-CD
PLAINTIFF,	)	
	)	
vs.	)	
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
	)	
DEFENDANT,	)	
	)	
vs.	)	
	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
	)	
	)	
ADDITIONAL DEFENDANT.	)	
	)	

ADDITIONAL DEFENDANT'S RESPONSE TO MOTION FOR CLARIFICATION AND RECONSIDERATION

AND NOW, comes the Additional Defendant, Sweetland Engineering & Associates, Inc. ("Sweetland"), by and through its attorneys, WAYMAN, IRVIN & McAULEY, LLC, and files the following **RESPONSE TO MOTION FOR CLARIFICATION AND RECONSIDERATION**, and in support thereof avers the following:

1. Admitted.

2. Admitted.

3. Admitted in part and denied in part. It is that Plaintiff noticed and conducted a deposition of Robert Bruce, a former employee of Sweetland. It is denied that said deposition included a "high number" of objections.

4. This Defendant is without knowledge or information sufficient to form a belief as to what Plaintiff anticipates relative to future depositions.

5. No responsive pleading is required.

6. No responsive pleading is required.

7. In response, this Defendant believes that the Orders issued by the Court were sufficiently clear and require no further clarification and/or confirmation.

8. In response, this Defendant believes that the Orders issued by the Court were sufficiently clear and require no further clarification and/or confirmation.

9. Admitted.

10. Admitted.

11. Said Paragraph correctly quotes Rule 30(b)(6) of the Federal Rules of Civil Procedure; this Defendant denies the characterization that said Rule is "nearly indistinguishable" from Rule 4007.1(e).

12. It is admitted that Plaintiff has identified at least one non-binding case, *Ierardi v. Lorillard, Inc.*, which construes Rule 30(b)(6) of the Federal Rules of Civil Procedure.

13. It is admitted that Plaintiff has identified at least one non-binding case, *Ierardi v. Lorillard, Inc.*, which construes Rule 30(b)(6) of the Federal Rules of Civil Procedure.

14. Admitted in part and denied in part. Plaintiff has accurately quoted *Ierardi v. Lorillard, Inc.*. However, said case is not binding precedent in this Court and is factually distinguishable from the instant case. At least one of the individuals designated by Sweetland have personal knowledge of certain facts and circumstances at issue unlike *Ierardi* in which the designee had no personal knowledge.

15. Admitted in part and denied in part. It is admitted that nothing in the Sweetland Order limits Sweetland's obligation to designate and/or produce a witness or witnesses to testify as to matters known or reasonably available to the organization. However, it is denied that Rule 4007.1(e) requires the witness or witnesses produced by Sweetland to give "complete, knowledgeable and binding answers" on behalf of Sweetland. By way of further response, Rule 4007.1(e), the Pennsylvania state case law, and the Sweetland Order dictate Sweetland's obligations with respect to Plaintiff's above-identified notice of deposition.

16. The allegations in said Paragraph relate to a party other than the within answering Defendant and, therefore, no response is required.

17. Admitted in part and denied in part. Although Rule 4003.1(c) and the 1989 Explanatory Comment are accurately recited in the Motion, it is denied that said Rule precludes objections based upon the ground that a deposition question seeks an expert

opinion. Whether a prospective deposition question seeks an impermissible opinion should be determined on a question by question basis.

18. Admitted in part and denied in part. Although Rule 4003.1(c) is accurately recited in the Motion, it is denied that said Rule precludes objections based upon the ground that a deposition question seeks an expert opinion. Whether a prospective deposition question seeks an impermissible opinion should be determined on a question by question basis.

19. Rule 4003.5 of the Pennsylvania Rules of Civil Procedure speaks for itself.

20. Admitted in part and denied in part. It is admitted that Plaintiff has correctly recited a portion of the Explanatory Comment to Rule 4003.5. It is specifically denied that Rule 4003.5 "only immunizes expert opinions from person 'retained or specially employed' by a party . . .." By way of further response, it is further denied that Rule 4003.5 is at all applicable to depositions noticed under Rule 4007.1(e).

21. Only Rule 4003.1 specifically relates to and governs deposition questions seeking an opinion or contention that relates to a fact or the application of law to fact.

22. The allegations in said Paragraph are conclusions of law to which no responsive pleading is required.

23. The allegations in said Paragraph are conclusions of law to which no responsive pleading is required. By way of further response, Plaintiff's right to ask for an

obtain opinion testimony is governed by Rule 4003.5 and needs no further elaboration by the Court.

24. The allegations in said Paragraph are conclusions of law to which no responsive pleading is required. By way of further response, Plaintiff's right to ask for an obtain opinion testimony is governed by Rule 4003.5 and needs no further general elaboration by the Court.

25. The allegations in said Paragraph relate to the Authority and/or the Authority Order as identified by Plaintiff in its Motion, and therefore, no response is required of this Defendant.

26. The allegations in said Paragraph relate to the Authority and/or the Authority Order as identified by Plaintiff in its Motion, and therefore, no response is required of this Defendant.

27. The allegations in said Paragraph relate to the Authority and/or the Authority Order as identified by Plaintiff in its Motion and, therefore, no response is required of this Defendant.

28. The allegations in said Paragraph relate to the Authority and/or the Authority Order, as identified by Plaintiff in its Motion and, therefore, no response is required of this Defendant.

29. The allegations in said Paragraph relate to the Authority and/or the Authority Order as identified by Plaintiff in its Motion and, therefore, no response is required of this Defendant.

30. The allegations in said Paragraph relate to the Authority and/or the Authority Order as identified by Plaintiff in its Motion, and therefore, no response is required of this Defendant.

31. The allegations in said Paragraph relate to the Authority and/or the Authority Order, as identified by Plaintiff in its Motion and, therefore, no response is required of this Defendant.

32. The allegations in said Paragraph relate to the Authority and/or the Authority Order, as identified by Plaintiff in its Motion and, therefore, no response is required of this Defendant.

33. The allegations in said Paragraph relate to the Authority and/or the Authority Order, as identified by Plaintiff in its Motion and, therefore, no response is required of this Defendant.

34. Admitted. By way of further response, the Court's grant of a Protective Order relative to Paragraphs 44-46 and 61 are not reasonably calculated to lead to the discovery of admissible evidence whether asked of corporate designees or individuals deposed in their individual capacity. Likewise, discovery relative to the first sentence of Paragraph 16 relating to "Woman-Owned Business" ("Identify any and all projects from 1995 to the present in which Sweetland has worked with a woman or a minority-owned business, and discuss Sweetland's experience in doing so") is likewise not reasonably calculated to lead to the discovery of admissible evidence and is unduly burdensome

whether sought from a corporate designee or an individual in his or her individual capacity.

35. The Sweetland Order speaks for itself.

36. Rule 4003.1 speaks for itself and any interpretation thereof is specifically denied.

37. Admitted. By way of further response, Rule 4003.1 speaks for itself and any interpretation thereof is specifically denied.

38. Said Orders speak for themselves.

39. It is denied that the Court's Orders require any clarification.

40. Plaintiff has correctly cited Paragraph 5 of the Sweetland Order.

41. This Defendant is without knowledge or information sufficient to form a belief as to what Plaintiff's were in so agreeing.

42. No responsive pleading is required.

43. No responsive pleading is required.

44. It is denied that the Court's Sweetland Order requires further clarification or confirmation. It is further denied that the Orders specifically entitle Plaintiff to *in limine* relief based upon Defendant's responsive to Plaintiff's discovery requests, including the production of a witness or witnesses in response to any deposition notices pursuant to Rule 4007.1(e).

45. Admitted.

46. This Defendant opposes any such reconsideration.

47. This Defendant opposes any such reconsideration; Plaintiff offers no new arguments in this regard or different than those raised at time of oral argument upon Sweetland's Motion for Protective Order.

48. This Defendant opposes reconsideration in this regard.

49. This Defendant opposes reconsideration in this regard.

50. This Defendant opposes reconsideration in this regard.

51. This Defendant opposes reconsideration in this regard.

52. Admitted.

53. The allegations in said Paragraph relate to the Authority, and therefore, no response is required of this Defendant.

54. It is admitted that Plaintiff and Sweetland have reached some agreement in principle on certain issues.

55. Admitted in part and denied part. Upon further reflection and by further response, the Sweetland Protective Order issued by this Court also properly precludes Plaintiff from questioning witnesses deposed in their individual capacity relative to the **first sentence of Item No 16** of Attachment A ("Identify any and all projects from 1995 to the present in which Sweetland has worked with a woman or minority-owned business, and discuss Sweetland's experience in doing so") as said item is not reasonably calculated to lead to the discovery of admissible evidence and is unduly burdensome. That is,

Paragraph 4 of the Sweetland Order with respect to Item No. 44-46, 61 **and 16** (first sentence) apply to a corporate designee deposition as well as the deposition of an individual.

56. Admitted in part and denied in part. See Paragraph 55 above; the only modification to the agreement set forth by Plaintiff in its Motion and Proposed Order pertains to Item No. 16 (first sentence), which Additional Defendant believes applies to a corporate designee deposition as well as the deposition of an individual..

57. Admitted. By way of further response, Plaintiff is generally entitled to move *in limine* as it sees fit and is done in good faith. Should clarification be granted in this regard, such grant should not be construed such that Plaintiff is necessarily entitled to *in limine* relief based upon the grounds set forth in Paragraph 57 of its Motion for Clarification or Reconsideration.

58. Admitted to the extent that any Order issued indicates that Plaintiff is not necessarily entitled to relief based upon the basis set forth in Paragraph 57 of its Motion for Clarification or Reconsideration.

59. Admitted in part and denied in part. Upon further reflection by the undersigned, Sweetland is **also** unwilling to agree to the word **"complete,"** as such term can be ambiguous and is not an express requirement of Rule 4007.1(e).

60. Admitted in part and denied in part. Sweetland is also unwilling to agree to the word **"complete."**

61. Admitted.

62. Denied, as this Defendant does not believe that these issues require reconsideration and the same is opposed.

Accordingly, Additional Defendant, Sweetland Engineering & Associates, Inc., respectfully requests this Honorable Court to deny Plaintiff's Motion for Clarification and Reconsideration.

Respectfully submitted,

WAYMAN, IRVIN & McAULEY, LLC

Paul M. Mannix, Esquire
PA ID No. 76225
Jeffrey A. Kubay, Esquire
PA ID No. 76378

Attorneys for Additional Defendant,
Sweetland Engineering & Associates, Inc.

NO. 01-1265-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONSE TO MOTION FOR CLARIFICATION AND RECONSIDERATION,** has been served on the following counsel of record by first-class U.S. mail, postage pre-paid, or via e-mail, this 29th day of March, 2006:

Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Drive, Suite 100
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(Attorney for Plaintiff)

Richard A. Bell, Esquire
Bell, Silberblatt & Wood
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Clearfield, PA 16830-0670
(Attorney for Plaintiff)

Rolf E. Kroll, Esquire
Shaun J. Mumford, Esquire
MARGOLIS, EDELSTEIN
3510 Trindle Road
Camp Hill, PA 17011
(Attorney for WBMA)

WAYMAN, IRVIN & McAULEY, LLC

Paul M. Mannix, Esquire
Jeffrey A. Kubay, Esquire

Attorneys for Additional Defendant, Sweetland Engineering & Associates, Inc.

:233860.1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,	)	CIVIL DIVISION
	)	
	)	NO. 01-1265-CD
PLAINTIFF,	)	
	)	
VS.	)	
	)	
WALLACETON-BOGGS MUNICIPAL AUTHORITY,	)	
	)	
	)	
DEFENDANT,	)	
	)	
VS.	)	
	)	
SWEETLAND ENGINEERING & ASSOCIATES, INC.,	)	
	)	
	)	
ADDITIONAL DEFENDANT.	)	
	)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2006, upon consideration of **RESPONSE TO MOTION FOR CLARIFICATION AND RECONSIDERATION**, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for Clarification and Reconsideration in DENIED.

BY THE COURT,

_____J.

:233860.1

LAW OFFICES OF

WAYMAN, IRVIN & McAULEY, LLC

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o ALSO ADMITTED IN OHIO
+ ALSO ADMITTED IN WEST VIRGINIA

WASHINGTON COUNTY OFFICE
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OF COUNSEL
W. ARCH IRVIN, JR.
BERNARD J. McAULEY

IN REPLY PLEASE REFER TO FILE

Writer's E-mail: jkubay@waymanlaw.com

296661
JAK

March 29, 2006

Via Fax- 814-765-7649 and U.S. Mail

Honorable Fredric J. Ammerman
Court of Common Pleas of Clearfield County
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

RE: Continental Construction v. Wallaceton-Boggs Municipal Authority, et al Docket No. 01-1265-CD (Clearfield County)

Dear Judge Ammerman:

Relative to the above-captioned matter, enclosed please find Additional Defendant Sweetland's Response to Plaintiff's Motion for Clarification and Reconsideration. With regard to the same, in general, Additional Defendant does not believe that clarification or reconsideration of the Sweetland Protective Order is necessary.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Jeffrey A. Kubay

JAK:pmt
Enclosure
cc: Kevin J. McKeon, Esquire (w/enc. - *Via E-Mail Only - kmckeon@wthf.com*)
Rolf E. Kroll, Esquire (w/enc. - *Via E-Mail Only - rkroll@margolisedelstein.com*)
Richard A. Bell, Esquire (w/enc. - *Via E-Mail Only - rbell@pennswoods.net*)

:233927.1

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED Copies-
01 12:57 see reverse
MAR 27 2006
William A. Shaw
Prothonotary/Clerk of Courts

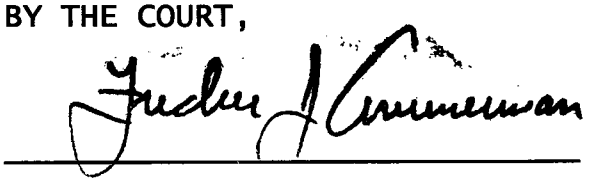
CONTINENTAL CONSTRUCTION, INC. Plaintiff	:	
-vs-	:	
WALLACETON-BOGGS MUNICIPAL AUTHORITY Defendant	:	No. 01-1265-CD
-vs-	:	
SWEETLAND ENGINEERING & ASSOCIATES, INC. Additional Defendant	:	

O R D E R

NOW, this 27th day of March, 2006, the Court being in receipt of the Motion for Clarification and Reconsideration filed on behalf of the Plaintiff; the Court wishing to issue a ruling on the said Motion as soon as possible, it is the ORDER of this Court that counsel for the Defendant and Additional Defendant file a written response to the Motion in no more than two (2) days from this date. The Court notes that the Court will cause a copy of this Order to be faxed to counsel for both the Defendant and the Additional Defendant this date. The Court will expect the written response to be faxed to the Court (814-765-7649) prior to 4:00 p.m. on Wednesday, March 29, 2006. The original of the written Motion may be

received in the U.S. mail by the Prothonotary after the said deadline.

BY THE COURT,



President Judge

FILED

MAR 27 2006

William A. Shaw
Prothonotary/Clerk of Courts

1cc Kevin McKeon
1cc R. Bell
1cc Kroll, Mumford, Kronthal
1cc McTiernan, Mannix, Kubacz
Fax to all above

Fax: 814-765-7659

Courthouse

Fax

To: Kevin J. McKeon **From:** William A. Shaw

Fax: (703) 893-8029 **Date:** 3/27/06

Phone: **Pages:** 3

Re: **CC:**

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•**Comments:**

*** TRANSMISSION REPORT ***

Mar.27 '06 13:48

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Fax: 814-765-7659

Courthouse

Fax

To: Richard A. Bell **From:** William A. Shaw

Fax: (814) 765-9730 **Date:** 3/27/06

Phone: **Pages:** 3

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*** TRANSMISSION REPORT ***

Mar.27 '06 13:58

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Fax

To: Rolf Kroll, Shawn Mumford, Barry Kosthal **From:** William A. Shaw

Fax: (717) 975-8124 **Date:** 3/27/04

Phone: **Pages:** 3

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*** TRANSMISSION REPORT ***

Mar.27 '06 14:02

DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
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Fax: 814-765-7659

Courthouse

Fax

To: Francis X. McTiernan
Paul Manfix
Jeffrey A. Kubay

From: William A. Shaw

Fax: (412) 391-1464

Date: 3/27/06

Phone:

Pages: 3

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'*** TRANSMISSION REPORT ***

Mar.27 '06 14:06

DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
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*** ACTIVITY REPORT ***

Mar.27 '06 14:10

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Rx. TOTAL PAGES	003849
PRINT TOTAL PAGES	008854

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5	Mar.27	14:00	1'30	7179758124	G3	02	OK
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Rx.							

ROLF E. KROLL, ESQUIRE
Pa. Supreme Court I.D. No. 58874
MARGOLIS EDELSTEIN
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Camp Hill, Pennsylvania 17011
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E-Mail: rkroll@margolisedelstein.com

Attorneys for Defendant:
WALLACETON-BOGGS MUNICIPAL AUTHORITY

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	:	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
v.	:	CIVIL ACTION – LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant,	:	NO. 01-1265-CD
v.	:	
SWEETLAND ENGINEERING, Additional Defendant.	:	JURY TRIAL DEMANDED

FILED no cc
m/12:29 BK
MAR 31 2006
William A. Shaw
Prothonotary/Clerk of Courts

ANSWER TO MOTION FOR CLARIFICATION AND RECONSIDERATION OF DEFENDANT, WALLACETON-BOGGS MUNICIPAL AUTHORITY

AND NOW, comes Defendant, Wallaceton-Boggs Municipal Authority ("Wallaceton-Boggs"), by and through its counsel, Margolis Edelstein, to answer the Motion for Clarification and Reconsideration and in support thereof avers the following:

I. INTRODUCTION AND BACKGROUND

1. Admitted. It is admitted that on or about March 17, 2006,this Honorable Court issued two (2) Orders. It is significant that these Orders followed more than an hour-long conference of counsel pursuant to Local Rule 208.2(e) which itself followed research and analysis of all of the applicable Rules of Civil Procedure, including Pennsylvania Rule of Civil Procedure 4007.1(e). Further, these Orders were issued after extended argument

before this Honorable Court and after Briefs were filed by both Sweetland and Wallaceton-Boggs.

2. Denied as stated. The Motions and Orders arose from the need to preclude Plaintiff from misusing Rule 4007.1(e) by requiring the Authority to be subject to questions and legal implications not contemplated by Rule 4007.1(e). Wallaceton-Boggs' Motion also arose from the concern that Plaintiff's Deposition Notice and Attachment A thereto would require an unreasonable investigation, burden and expense.

3. Denied. Wallaceton-Boggs denies that the number of objections was "high" relative to the questions that were being asked. It is significant in this regard that the deposition in question took the balance of the working day and consumed 349 pages on Day One and an additional 346 pages on Day Two. Many of the objections at issue regarded interpretation of the contract which is principally a matter of law for the Court, involved speculation or were unreasonably vague and misleading. Moreover, most of the objections were joined by both Defendants' counsel. Thus, the inference that counsel for Defendants interposed an unreasonably high number of objections is specifically denied.

4. Admitted in part and denied in part. It is admitted that the scope of the Order will impact the extent of the disagreements amongst counsel. It is submitted that if the Court grants the Motion for "Clarification," more disagreements will occur. As discussed below, Plaintiff's attempt to misuse Rule 4007.1(e) as to the Authority will cause undue burden, expense and confusion to the detriment of all parties involved and particularly to Wallaceton-Boggs.

5. Denied. These allegations of Plaintiff's Motion for Clarification and

Reconsideration constitute conclusions of law which are both factually and legally incorrect and strict proof is demanded at trial.

6. Denied. It is respectfully submitted that the Court's original Order of March 17, 2006, is clear. If Plaintiff's Motion is granted, it will result in more disagreements about the scope of Plaintiff's rights under the Pennsylvania Rules of Civil Procedure and the scope of the limitations created by the Orders of March 17, 2006. Plaintiff's Motion for "Clarification," in its totality, asks this Court to place its imprimatur on various portions of the Order taken in isolation in a piecemeal fashion, and apply this interpretation to various Rules of Civil Procedure, which are likewise selected in a piecemeal fashion. Moreover, such an Order would be in the nature of an advisory opinion and will interject confusion into an otherwise clear, correct and fair ruling with respect to the protective Orders already filed, briefed and ruled upon. Finally, paragraphs 7(b) through (e) improperly and unnecessarily endeavor to interject Plaintiff's interpretation of the Court's already clear Order. To the extent that Plaintiff correctly recites the Court's Order, the Motion adds nothing to the further resolution of the case. To the extent that the Motion adds additional obligations to any of the parties, it is improper.

7. Wallaceton-Boggs notes the following defects in subparagraphs (a) through (e) of paragraph 7:

a. To the extent this subparagraph correctly cites this Court's March 17th Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied.

b. To the extent this subparagraph correctly cites this Court's March 17th

Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied.

c. To the extent this subparagraph correctly cites this Court's March 17th Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied. By way of further answer, this subparagraph incorrectly articulates this Honorable Court's Order and the applicable law. Specifically, Pennsylvania law is clear that lay testimony is inappropriate where it involves skill and training beyond that possessed by the ordinary lay person. See, Pa.R.E. 701. Moreover, opinion testimony is further protected by Rule 4003.3 that protects the representative of a party from disclosing "his or her mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics." In this complex construction case where the heart of the case involves interpretation of the contract which involves issues of law mixed with engineering expertise, all of which are beyond the ken of the average lay persons that make up the Authority, the Court's original Order of March 17, 2006, is appropriate, fair and equitable. This subparagraph would subvert that Order resulting in inappropriate, burdensome and oppressive questions being directed to Authority members.

d. To the extent this subparagraph correctly cites this Court's March 17th Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied. Moreover, this paragraph is vaguely susceptible to

multiple interpretations, is based upon insufficient facts and is therefore inappropriate.

e. To the extent this subparagraph correctly cites this Court's March 17th Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied. By way of further answer, this subparagraph requests this Court to place its imprimatur on motions in limine which will, by necessity, stand or fail of their own weight once filed.

8. Denied. The Court has already ruled after extensive argument and briefing on the issues of Sweetland's Growth and staffing of similar projects, and accordingly, no "clarification" of this Order is required.

II. SCOPE OF DEFENDANT'S OBLIGATION IN RESPONSE TO NOTICE PURSUANT TO RULE 4007.1(e)

9-11. Admitted.

12. Admitted in part and denied in part. It is admitted that Plaintiff has supplied this Court with several Federal cases. It is specifically denied that these are persuasive for the proposition asserted by Plaintiff.

13. Denied. Plaintiff's reliance upon *Ierardi v. Lorillard, Inc.*, No. 90-7049, 1991 U.S. Dist. LEXIS 11887, (E.D. Pa. Aug. 23, 1991), a copy of which is attached hereto as Exhibit "A," demonstrates Plaintiff's misuse of Pa. R.C.P. No. Rule 4007.1(e). Specifically, *Ierardi* involved a major corporation with obvious technical expertise that was endeavoring to avoid answering a specific question that went to the heart of Plaintiff's case. In such a case, Plaintiff was entitled to use the Federal counterpart to

Rule 4007.1(e) to avoid being ambushed at trial. Specifically, in *Ierardi*, the defendant manufactured a cigarette filter that used asbestos. As of the date of the decision, August 20, 1991, the defendant maintained the position that it had no employees with personal knowledge of the effects of asbestos. The court observed that "what [the defendant] knew and when it knew it is at the heart of the case against it." Accordingly, the plaintiff's use of the federal counterpart to 4007.1(e) was appropriate. The topic area was limited, was central to plaintiff's case, was not readily ascertainable by plaintiff by other means, and thus, plaintiff was entitled to avoid ambush at trial. The precisely opposite situation exists in the instant case where Plaintiff's discovery requests do not go to the heart of the case, but instead, in an overly-broad and far reaching manner, seek all information having anything to do with the case. This is particularly inappropriate where the Authority members bear none of the particular expertise that the manufacturer of a cigarette filter using asbestos might have. Thus, Plaintiff's reliance upon *Ierardi* is misplaced.

14. Denied. The fact that the *Ierardi* court found that it was not an "undue burden" upon defendant was a fact specific finding in that case. Certainly, a manufacturer utilizing asbestos products should know, by 1991, what the potential effects of asbestos are. It could certainly not claim ignorance of that fact and then provide contrary testimony at trial. Here, Plaintiff is endeavoring to use the very same rule to disclose every possible needle in a haystack involving thousands upon thousands of documents from a group of community-minded volunteers who lay no similar claim to expertise of any kind. The burden, therefore, is extreme; the expense is extreme; and the

unfairness to the Authority is palpable.

15-16. Denied. To the extent this subparagraph correctly cites this Court's March 17th Order, it is admitted. To the extent that it endeavors to modify or alter the Order, it is denied.

III. SCOPE OF PLAINTIFF'S RIGHT TO SEEK AND OBTAIN OPINION EVIDENCE FROM SWEETLAND

17. Admitted.

18. Denied. This paragraph taken in isolation misapprehends Plaintiff's designs in the instant case. The contract at issue is long and complex. It incorporates specifications that are even longer and more complex. Moreover, the construction of an insurance policy is a matter of law for the Court. It is not an application of law to fact but rather often a pure conclusion of law. Moreover, interpretation of the contract under the facts of this case often involves engineering and construction expertise that render such questions highly problematic at best. This Honorable Court's March 17th Opinion fairly recognizes these complications and limits Plaintiff's inquiries to the facts within the ken of the ordinary lay people that work for the Authority.

19-20. Denied. These allegations of Plaintiff's Motion for Clarification and Reconsideration constitute conclusions of law which are both factually and legally incorrect and strict proof is demanded at trial.

21. Denied. Paragraph 18 is incorporated herein by reference. Moreover, nothing in this paragraph mentions the prohibitions contained in Pa.R.C.P. No. 4003.3 that "discovery shall not include disclosure ... from a [parties] mental impression, conclusions

or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics." Questions regularly ran through the deposition of Mr. Bruce concerning the obligations that various parties had under the contract and whether those obligations were fulfilled. Such broad sweeping questions are beyond the ken of the lay people Authority and yet, under Plaintiff's construction of 4007.1, if an Authority member does not have an affirmative answer to such a question, no contrary testimony could be elicited at trial. Moreover, Plaintiff fails to mention Pa.R.E. 701 which provides, as follows:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness, helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Thus, Plaintiff's interpretation of the law in this regard is incorrect and unfair, especially as applied to Wallaceton-Boggs. Under this Rule, the objectionable areas of inquiry discussed above will not be admissible evidence from Authority members. Moreover, the basis for the lack of admissibility of such opinions centers upon the lack of expertise and technical knowledge possessed by the Authority members. These shortcomings are no less prevalent or important in the discovery process. The lack of technical expertise that renders the opinions sought by Plaintiff inadmissible, also make it clear that the discovery of such opinion is not reasonably calculated to lead to the discovery of admissible evidence. Accordingly, Plaintiff's assertions here fail to take into account the complexity of this litigation, the identity of the deponents and body of law surrounding

lay witness opinions.

22. Denied. This paragraph constitutes a conclusion of law which is legally incorrect and requires no further responsive pleading.

23. Denied. Paragraph 21 hereof is incorporated herein by reference as is set forth at length.

24. Paragraph 21 herein is incorporated herein by reference. Plaintiff's reliance on Nos. 4003.5 and 4003.1 is the only applicable Rules of Civil Procedure in this regard is incorrect.

IV. SCOPE OF PLAINTIFF'S RIGHT TO SEEK AND OBTAIN OPINION EVIDENCE FROM THE AUTHORITY

25. This paragraph constitutes a conclusion of law to which no responsive pleading is required. Moreover, Plaintiff's characterization of the March 17, 2006 Order is precisely the problem with Plaintiff's Motion on the whole.

26. Denied. Wallaceton-Boggs respectfully submits that a reconsideration of this Honorable Court's prior Order of March 17, 2006, would unfairly confuse issues that were reasonably clear.

27. Denied. This paragraph constitutes conclusion of law to which no responsive pleading is required.

28. Denied. The Authority has already advised Plaintiff of who it intends to designate, if necessary. This individual is not an expert witness nor is she a lawyer. This witness was identified before the Court and counsel. Accordingly, this paragraph has no bearing on the actual facts of this case.

29. The Order pertaining to the Authority is an incorrect statement of the law as applied to the pertinent facts and does not preclude the seeking of discoverable facts or opinions.

30. Admitted.

31. Denied. This paragraph ignores the fact that none of the Authority members are engineers and none are attorneys. The opinions relevant to this interpretation of the contract and to the construction of this year long project necessarily involve scientific, technical and specialized knowledge regarding construction, engineering, contract interpretation and the law. Moreover, they involve a huge burden and expense in collecting, organizing and reviewing thousands of pages of documentation, which are equally available to the Plaintiff. Accordingly, under the Pennsylvania Rules of Evidence, Plaintiff would not be entitled to such testimony nor would same ever be admissible. See, Pa.R.E. 701. In *Graham v. I. M. O. Industries, Inc.*, 16 Pa. D & C. 4th 492, 500 (1992), the Court addressed employees that possessed specialized knowledge permitting them and enabling them to testify as to complicated technical opinions. Thus, this case is not persuasive given the facts of the instant case.

32. Denied. This paragraph contains conclusions of law which are legally incorrect.

33. Denied. Plaintiff's piecemeal selection of individual Rules of Civil Procedure to the exclusion of others and to the exclusion of the Rules of Evidence and the case law pertaining to the use of opinion testimony of lay witnesses that is accepted in Pennsylvania and across the country, explains why it reaches the erroneous conclusion

set forth in the instant Motion. Plaintiff's failure to cite Pennsylvania Rule of Evidence 701 and Pa.R.C.P. No. 4003.3 demonstrate the error in Plaintiff's reasoning. Moreover, Plaintiff's approach to the Motion for "Clarification" is equally flawed by taking individual portions of the Opinion and characterizing them in a vacuum without the benefit of the other Rules of Civil Procedure, Evidence or even a consideration of the witness that would deliver the proposed testimony.

V. PLAINTIFF'S RIGHT TO SEEK AND OBTAIN DISCOVERY THROUGH PERSONS DEPOSED IN THEIR INDIVIDUAL CAPACITY

34. Denied. Neither Defendant has had occasion to address any effort by Plaintiff to conduct further discovery on the matter set forth in Attachment A and thus, no objection has attained at this juncture.

35-38. Denied. These paragraphs constitute a conclusion to which no responsive pleading is required.

39. Denied. This paragraph constitutes a conclusion to which no responsive pleading is required. By way of further answer, much of the logic and reasoning applicable to the defects in Plaintiff's position with regard to Rule 4007.1(e) deposition is also applicable to depositions of Authority members taken in their individual capacity.

VI. PLAINTIFF'S RIGHT TO MOVE IN LIMINE TO BAR EVIDENCE NOT PRODUCED DURING DISCOVERY

40. Admitted.

41. Denied. After reasonable investigation, Wallaceton-Boggs is without

information sufficient to form a belief as to the truth of the averments of this paragraph and same are therefore denied.

42-43. The allegations of this paragraph state conclusions of law to which no responsive pleading is required and same are therefore denied.

44. The allegations of this paragraph state conclusions of law to which no responsive pleading is required and same are therefore denied. By way of further answer, Paragraphs 41 through 44 are premature. Plaintiff has the right to file Motions in Limine in accordance with the Pennsylvania Rules of Civil Procedure and the Pennsylvania Rules of Evidence. At that time, the merit of such Motions can be addressed by the Court.

VII. PLAINTIFF'S RIGHT TO SEEK ADDITIONAL DISCOVERY REGARDING SWEETLAND'S RATE OF GROWTH AND THE MANNER IN WHICH SWEETLAND'S STAFFED SIMILAR PROJECTS

45-51. These paragraphs are directed to Additional Defendant and accordingly, no responsive pleading is required thereto.

VIII. STATUS OF DISCUSSIONS BETWEEN THE PARTIES ON THE ISSUES DESCRIBED ABOVE

52. Admitted in part and denied in part. It is admitted that Plaintiff has expended great effort in seeking clarification and reconsideration. It is denied that Plaintiff has expended great effort in limiting the issues upon which court action is needed.

53. Denied. Wallaceton-Boggs has entreated and engaged the Plaintiff in extended discourse in an effort to reach compromise. However, as set forth above, the Authority

opposes both the piecemeal manner in which Plaintiff's endeavor to dissect and interpret this Honorable Court's March 17th Order as well as the conclusions reached by Plaintiff through the process of isolation and dissection. Accordingly, Wallaceton-Boggs is constrained to oppose the Motion in its entirety rather than give the Court the impression that Wallaceton-Boggs agrees with either the need to alter the Court Order originally issued or the manner in which Plaintiff has endeavored to alter it.

54. Denied. After reasonable investigation, Wallaceton-Boggs is without knowledge or information sufficient to form a belief as to the alleged agreement contained herein and accordingly, no responsive pleading thereto is required.

56. Denied. After reasonable investigation, Wallaceton-Boggs is without knowledge or information sufficient to form a belief as to the truth of the allegation in this paragraph and accordingly, no responsive pleading thereto is required. By way of further answer, the alleged agreement set forth herein is premature.

57. Denied. After reasonable investigation, Wallaceton-Boggs is without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein paragraph and accordingly, no responsive pleading thereto is required.

58-60. Denied. After reasonable investigation, Wallaceton-Boggs is without knowledge or information sufficient to form a belief as to the truth of the allegation in this paragraph and accordingly, no responsive pleading thereto is required. By way of further answer, the alleged agreement set forth herein is premature.

61. Admitted in part and denied in part. It is admitted that Wallaceton-Boggs disagrees with Plaintiff concerning the items listed in this paragraph. It is denied that

these are the only disagreements between Plaintiff and Wallaceton-Boggs as it pertains to the current discovery dispute.

62. Admitted.

Respectfully submitted,

MARGOLIS EDELSTEIN

Date: 3/29/06

By: _____

ROLF E. KROLL, ESQUIRE
PA. Attorney I.D. No. 47243
Attorneys for Defendant,
WALLACETON-BOGGS MUNICIPAL AUTHORITY

3510 Trindle Road
Camp Hill, PA 17011
(717) 975-8114

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing ANSWER TO MOTION FOR CLARIFICATION AND RECONSIDERATION OF DEFENDANT, WALLACETON-BOGGS MUNICIPAL AUTHORITY, on all counsel of record by placing the same in the United States mail at Camp Hill, Pennsylvania, first-class postage prepaid, on the 30th day of March, 2006, and addressed as follows:

VIA FAX: 703-893-8029 on 3/29/06
Kevin J. McKeon, Esquire
Watt, Tieder, Hoffar & Fitzgerald
8405 Greensboro Drive, Suite 100
McLean, VA 22102

VIA FAX: 412-391-1464 on 3/29/06
Richard A. Bell, Esquire
Bell, Silberblatt & Wood
318 E. Locust Street
P.O. Box 670
Clearfield, PA 16830-0670

VIA FAX: 814-765-9730 on 3/29/06
Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
437 Grant Street, Suite 1624
Pittsburgh, PA 15219-6101

MARGOLIS EDELSTEIN

By: _____
JoAnn E. Nelson, Secretary

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CONTINENTAL CONSTRUCTION, INC., Plaintiff	*	
vs.	*	NO. 01-1265-CD
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant	*	
vs.	*	
SWEETLAND ENGINEERING & ASSOCIATES, INC., Additional Defendant	*	

FILED (2)
01 10:00 cc 4cc
MAY 23 2006

William A. Shaw
Prothonotary/Clerk of Courts
Copies see reverse

ORDER

NOW, this 22nd day of May, 2006, upon consideration of Plaintiff's Motion for Clarification and Reconsideration, it is the ORDER of this Court as follows:

1. Nothing in either of the Court's Orders dated March 17, 2006, limits Sweetland's obligation to produce a witness or witnesses prepared to "give complete, knowledgeable and binding answers" on "matters known or reasonably available to" Sweetland, on all items set forth in Plaintiff's Notice of Deposition Pursuant to Rule 4007.1(e) directed to Sweetland, except with regard to Items 14, 15, 44, 45, 46, 61 and the first sentence of 16, in Attachment A thereto.

2. Nothing in either of the Court's Orders dated March 17, 2006, limits the Authority's obligation to produce, after at least forty-five (45) days notice, a witness or witnesses prepared to "give complete, knowledgeable and binding answers" on "matters known or reasonably available to" the Authority on all Items set forth in Plaintiff's Notice of Deposition Pursuant to 4007.1(e) directed to the Authority, as long as Plaintiff revises Attachment A thereto "to avoid seeking legal and/or expert opinions beyond the ordinary ken of the average lay persons that work for the Authority and to avoid unreasonable burden and expense." Nothing herein limits the Authority's right to again move for a protective order in response to future discovery propounded by the Plaintiff.

3. Nothing in either of the Court's Orders dated March 17, 2006, or in the paragraphs above, limits the Plaintiff's rights under Pa. R.C.P. 4003.1(c) to ask for and obtain opinion evidence, even those relating to "the application of law to fact," in the event that Sweetland and/or the Authority, in response to Plaintiff's Notices Pursuant to Rule 4007.1(e), designate persons: (a) who are "regular employees" of a party, or (b) who have firsthand knowledge of relevant facts, but are *not* "retained or specially employed" by a party.

4. The protection provided by the Orders dated March 17, 2006, is limited to Depositions Pursuant to Rule 4007.1(e), and nothing in either of the Orders precludes the Plaintiff from questioning witnesses deposed in their individual capacity about "any matter, not privileged, which is relevant to the subject matter involved in the pending action," and it "is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence," including, but not limited to, all of the matters identified in Attachment A to each Plaintiff's Notices of Depositions Pursuant to Rule 4007.1(e), except that Sweetland reserves the right to object and/or seek a protective order, based on its contention that Item Nos. 44, 45, 46 and 61 in the Notice to Sweetland are not reasonably calculated to lead to the discovery of admissible evidence, if and when, Plaintiff seeks further discovery on these particular Items through depositions of individuals in their individual capacity.

BY THE COURT,

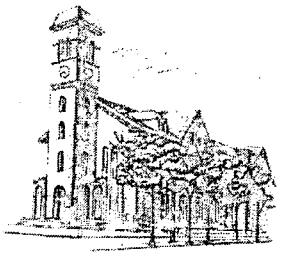
FREDRIC J. AMMERMAN
President Judge

FILED

MAY 23 2006

William A. Shaw
Prothonotary/Clerk of Courts

1 CC Attys: McKeon
R. Bell
Kroll, Mumford & Kronthal
McTiernan, Mannix, & Kubay



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw Prothonotary/Clerk of Courts
David S. Ammerman Solicitor
Jacki Kendrick Deputy Prothonotary
Bonnie Hudson Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 5/23/06

_____You are responsible for serving all appropriate parties.

__X__The Prothonotary's office has provided service to the following parties:

__X__Plaintiff(s)/Attorney(s)

__X__Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING & ASSOCIATES, INC.,

Additional Defendant.

FILED 1cc & 1 cert of disc issued m/11:30 am to Atty APR 7 2008 McKeon
William A. Shaw Copy to C/A
Prothonotary/Clerk of Courts

PRAECIPE TO SETTLE AND DISCONTINUE WITH PREJUDICE

Filed on behalf of:
CONTINENTAL CONSTRUCTION, INC.,
Plaintiff

Counsel of Record for this Party:

Kevin J. McKeon
Pa. I.D. #76232

WATT, TIEDER, HOFFAR & FITZGERALD, LLP

8405 Greensboro Drive, Suite 100
McLean, VA 22102
(703) 749-1000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONTINENTAL CONSTRUCTION, INC.,

Plaintiff,

v. Case No. 01-1265-CD

WALLACETON-BOGGS MUNICIPAL AUTHORITY,

Defendant,

v.

SWEETLAND ENGINEERING & ASSOCIATES, INC.,

Additional Defendant.

PRAECIPE TO SETTLE AND DISCONTINUE WITH PREJUDICE

To the Prothonotary:

On behalf of Plaintiff, Continental Construction, Inc., kindly mark the above-captioned action settled and discontinued with prejudice against both the Wallaceton-Boggs Municipal Authority and Sweetland Engineering & Associates, Inc.

Dated: April 3, 2008

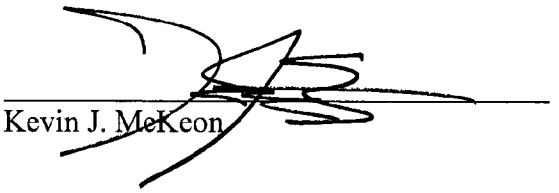
Kevin J. McKeon
Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
8405 Greensboro Drive, Suite 100
McLean, VA 22102
703-749-1000
703-893-8029 (facsimile)
kmckeon@wthf.com

CERTIFICATE OF SERVICE

I, Kevin J. McKeon, do hereby certify that a true and correct copy of the foregoing Praecipe to Settle and Discontinue with Prejudice was served upon the following on the 3rd day of April 2008, via U.S. Mail:

Rolf E. Kroll, Esquire
Margolis Edelstein
P.O. Box 932
Harrisburg, PA 17108-0932

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219



Kevin J. McKeon

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction

Vs. **No. 2001-01265-CD**

Wallaceton-Boggs Municipal Authority
Sweetland Engineering & Associates, Inc.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 7, 2008, marked:

Settled and Discontinued with prejudice

Record costs in the sum of $80.00 have been paid in full by Julee Marzella.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 7th day of April A.D. 2008.

William A. Shaw, Prothonotary

ROLF E. KROLL, ESQUIRE
Pa. Supreme Court I.D. No. 58874
MARGOLIS EDELSTEIN
3510 Trindle Road
Camp Hill, Pennsylvania 17011
Telephone: [717] 975-8114 **Direct Dial:** (717) 760-7502 **Attorneys for Defendant:**
Fax: [717] 975-8124 **WALLACETON-BOGGS MUNICIPAL AUTHORITY**
E-Mail: rkroll@margolisedelstein.com

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	: IN THE COURT OF COMMON PLEAS : CLEARFIELD COUNTY, PENNSYLVANIA
v.	: CIVIL ACTION – LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant,	: NO. 01-1265-CD
v.	
SWEETLAND ENGINEERING, Additional Defendant.	

PRAECIPE TO SETTLE AND DISCONTINUE WITH PREJUDICE

Filed on behalf of:
Wallaceton-Boggs Municipal Authority, Defendant

Counsel of Record for this Party:

Rolf E. Kroll
Pa. I.D. #47243

MARGOLIS EDELSTEIN

3510 Trindle Road
Camp Hill, PA 17011
(717) 760-7502

FILED 4cc & 1 Cert of
m/11:30 cm disc issued
APR 9 2008 to Atty Kroll
William A. Shaw
Prothonotary/Clerk of Courts

CONTINENTAL CONSTRUCTION, INC., Plaintiff,	:	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
v.	:	CIVIL ACTION – LAW
WALLACETON-BOGGS MUNICIPAL AUTHORITY, Defendant,	:	NO. 01-1265-CD
v.	:	
SWEETLAND ENGINEERING, Additional Defendant.	:	

PRAECIPE TO SETTLE AND DISCONTINUE WITH PREJUDICE

To the Prothonotary:

On behalf of Defendant, Wallaceton-Boggs Municipal Authority, kindly mark the above-captioned action settled and discontinued with prejudice against Continental Construction, Inc. with regard to all counter-claims asserted.

Dated: 4/7/08

Rolf E. Kroll, Esq.
Margolis Edelstein
3510 Trindle Road
Camp Hill, PA 17011
717-760-7502
717-975-8124 (facsimile)
RKroll@margolisedelstein.com

CERTIFICATE OF SERVICE

I, Rolf E. Kroll, do hereby certify that a true and correct copy of the foregoing Praecipe to Settle and Discontinue With Prejudice was served upon the following on the 7th day of April 2008, via U.S. Mail:

Kevin J. McKeon
Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Drive, Suite 100
McLean, VA 22102

Paul M. Mannix, Esquire
Wayman, Irvin & McAuley, LLC
1624 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Rolf E. Kroll

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Continental Construction

Vs. **No. 2001-01265-CD**

Wallaceton-Boggs Municipal Authority
Sweetland Engineering & Associates, Inc.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 9, 2008, marked:

Settled and Discontinued with Prejudice

Record costs in the sum of $80.00 have been paid in full by Julee Marzella .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 9th day of April A.D. 2008.

William A. Shaw, Prothonotary