



**CONSTRUCTION LAW GROUP**  
of  
**WARSHAW BURSTEIN, LLP**

PRESENTS

**LEVELING THE FIELD  
FOR NEW YORK CONTRACTORS  
ON PUBLIC CONSTRUCTION PROJECTS:**

**Frontline Reflections of an Attorney/Engineer**

**DECEMBER 10, 2014**

# LEVELING THE FIELD FOR NEW YORK CONTRACTORS ON PUBLIC CONSTRUCTION PROJECTS

## THE SPEAKERS

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Primary specialization is construction and environmental law and litigation, with representation of contractors, construction managers, engineers, architects, governmental bodies and other owner representatives in public and private sector matters in New York and other regional jurisdictions.

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To:		New York State Department of Transportation <b>ENGINEERING INSTRUCTION</b>	<b>EI</b> 14-021
<b>Title: REVISIONS TO STANDARD SPECIFICATIONS SECTION 100 – PHASE 7</b>			
Distribution: <input checked="" type="checkbox"/> Manufacturers (18) <input checked="" type="checkbox"/> Local Govt. (31) <input checked="" type="checkbox"/> Agencies (32)		<input checked="" type="checkbox"/> Surveyors (33) <input checked="" type="checkbox"/> Consultants (34) <input checked="" type="checkbox"/> Contractors (39) <input type="checkbox"/> _____ ( )	Approved: _____ /s/James Tynan James F. Tynan, P.E. Deputy Chief Engineer (Construction)
			10/21/14 Date

**102-02 EXAMINING THE CONTRACT DOCUMENTS AND THE WORK SITE.** Information on construction contracting opportunities, including letting schedules, contract documents, detailed plans of the work, contract proposals, supplemental information available to bidders, amendments, and other information are available on the Construction Opportunities > Contract Documents page of the Department's Business Center web site at: [www.dot.ny.gov/business](http://www.dot.ny.gov/business) for free download. Standard sheets are available on the Engineering > CADD Info > Drawings page of the Department's Business Center web site at: [www.dot.ny.gov/business](http://www.dot.ny.gov/business) for free download.

The attention of persons intending to make proposals is specifically called to Article 3 *Examination of Documents and Site* of the contract agreement wherein the bidder agrees that it has examined the contract documents and the site of the work and has fully informed itself from personal examination of the same regarding the quantities, character, location and other conditions affecting the work to be performed including the existence of poles, wires, pipes, ducts, conduits, and other facilities and structures of municipal and other public service corporations on, over or under the site. Particular attention is called to contract plans and the contract proposal, which contains special notes and special specifications, which may contain contract requirements at variance with standard specifications and standard sheets and may include information concerning the existence of poles, wires, pipes, ducts, conduits, and other facilities and structures of municipal and other Utilities on, over or under the site.

All inquiries prior to the receipt of bids regarding any discrepancy, error, or omission; or regarding the intent or meaning of the contract documents; shall be directed only through the website at: [www.dot.ny.gov/business](http://www.dot.ny.gov/business). Responses will be provided to Bidders through the website.

The Bidder agrees that its proposed contract prices include all costs arising solely from existing conditions shown, or specified in the contract documents including the Base Line Data, and/or readily observable from a site inspection during the bidding period available under this contract, and/or generally recognized as inherent in the nature of the work. The Bidder shall take no advantage of any apparent error or omission in the contract documents.

**A. Base Line Data.** The Department will make available relevant project specific information and engineering data that were used to develop the contract documents. The material will be listed as available on a form in the contract proposal entitled "Supplemental Information Available to Bidders". The supplemental information could include, for example, earthwork cross section sheets, various subsurface information, record plans, special reports and other pertinent project data. The information or data listed as available on the form can be accessed by the Contractor for inspection or reproduction at the Regional Office where the work is located. This material will be the Base Line Data and together with other contract documents will be used to determine changes to the work. Base Line Data will be consistently provided in all Department projects.

***“102-02 EXAMINING THE CONTRACT DOCUMENTS AND THE WORK SITE. The Bidder agrees that its proposed contract prices include all costs arising solely from existing conditions shown, or specified in the contract documents including the Base Line Data, and/or readily observable from a site inspection during the bidding period available under this contract, and/or generally recognized as inherent in the nature of the work. The Bidder shall take no advantage of any apparent error or omission in the contract documents.***

***A. Base Line Data. The Department will make available relevant project specific information and engineering data that were used to develop the contract documents.***

GENERAL CONDITIONS



DORMITORY AUTHORITY - STATE OF NEW YORK

Main Office  
515 Broadway  
Albany, NY 12207-2964  
(518) 257-3000

New York City Office  
One Penn Plaza, 52<sup>nd</sup> Floor  
New York, NY 10119-0098  
(212) 273-5000

ARTICLE 3 -- SITE CONDITIONS

Section 3.01 - Subsurface or Site Conditions Found Different

- A. The Contractor acknowledges that the Contract amount set forth in its bid includes such provisions which the Contractor deems sufficient for all subsurface or site conditions the Contractor could reasonably anticipate encountering as indicated in the Contract Documents, or borings, reports, rock cores, foundation investigation reports, topographical maps or other information available to the Contractor or from the Contractor's inspection and examination of the Site prior to submission of bids.
- B. The Owner assumes no responsibility for the correctness of any boring or other subsurface information and makes no representation whatsoever regarding subsurface conditions and test borings, reports, rock cores, foundation investigation and topographical maps which may be made available to the Contractor.
- C. Should the Contractor encounter subsurface or site conditions at the Site materially differing from those shown on or described in or indicated in the Contract Documents, the Contractor shall immediately give notice to the Owner of such conditions and shall not disturb said conditions until authorized to do so by the Owner.
- D. Subsurface or site conditions found materially differing from these that could have been reasonably anticipated may be cause for change to the Contract amount and time of completion. This determination will be made at the sole discretion of the Owner.

Section 3.02 - Verifying Dimensions and Conditions

- A. The Contractor shall take all measurements at the Site and shall verify all dimensions and conditions at the Site before proceeding with the Work. If said dimensions or conditions are found to be in conflict with the Contract Documents, the Contractor immediately shall refer said conflict to the Owner in writing. The Contractor shall comply with any revised Contract Documents.
- B. During the performance of the Work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment, and proceed with the fabrication to meet field conditions.
- C. The Contractor shall review all Contract Documents to determine exact location of all Work and verify spatial relationships of all the Work. Any question concerning said location or spatial relationships shall be submitted in a manner approved by the Owner.
- D. Special locations for equipment, pipelines, ductwork and other such items of the Work, where not dimensioned on plans, shall be coordinated with other affected Contractors.
- E. The Contractor shall be responsible for the proper fitting of the Work in place.

- A. The Contractor acknowledges that the Contract amount set forth in its bid includes such provisions which the Contractor deems sufficient for all subsurface or site conditions the Contractor could reasonable anticipate encountering as indicated in the Contract documents, or borings, reports, rock cores, foundation investigation reports, topographical maps or other information available to the Contractor or from the Contractor's inspection and examination of the Site prior to submission of bids.**
- B. The Owner assumes no responsibility for the correctness of any boring or other subsurface information and makes no representation whatsoever regarding subsurface conditions and test borings, reports, rock cores, foundation investigation and topographical maps which may be made available to the contractor. ...**
- D. Subsurface or site conditions found materially differing from these that could have been reasonably anticipated...cause....change to the Contract amount and time of completion. This determination will be made at the sole discretion of the Owner.**

**A. The Contractor shall take all measurements at the Site and shall verify all dimensions and conditions at the Site before proceeding with the Work. ...E. The Contractor shall be responsible for the proper fitting of the Work in place.**

**CITY OF NEW YORK**  
**STANDARD CONSTRUCTION CONTRACT**

**December 2013**

7. EXAMINATION OF PROPOSED CONTRACT

A. Request for Interpretation or Correction. Prospective Bidders must examine the Contract documents carefully and before bidding must request of the Agency Chief Contracting Officer (the "ACCO") in writing for an interpretation or correction of every apparent ambiguity, inconsistency or error therein which should have been discovered by a reasonably prudent bidder. Such interpretation or correction, as well as any additional Contract provisions the ACCO may decide to include, will be issued in writing by the ACCO as an addendum to the Contract, which will be sent by fax or may be obtained by each person recorded as having received a copy of the Contract documents from the Contract Clerk, and which also will be posted at the place where the Contract documents are available for the inspection of prospective Bidders. Upon such mailing or delivery and posting, such addendum shall become a part of the Contract documents, and binding on all Bidders, whether or not actual notice of such addendum is shown.

B. Only the Agency Chief Contracting Officer's Interpretation or Correction Binding. Only the written interpretation or correction given by the ACCO shall be binding, and prospective Bidders are warned that no other officer, agent or employee of the City is authorized to give information concerning, or to explain or interpret, the Contract.

***“Prospective Bidders must examine the Contract documents carefully and before bidding must request of the Agency chief contracting Officer (the “ACCO”) in writing for an interpretation or correction of every apparent ambiguity, inconsistency or error therein which should have been discovered by a reasonably prudent bidder.”***

***“Only the written interpretation or correction given by the ACCO shall be binding...”***

WITNESSETH:

The parties, in consideration of the mutual agreements contained herein, agree as follows:

CHAPTER I  
THE CONTRACT AND DEFINITIONS

ARTICLE 1. THE CONTRACT

1.1 Except for titles, subtitles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience), the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this Contract:

- 1.1.1 All provisions required by law to be inserted in this Contract, whether actually inserted or not;
- 1.1.2 The Contract Drawings and Specifications;
- 1.1.3 The General Conditions and Special Conditions, if any;
- 1.1.4 The Contract;
- 1.1.5 The Information for Bidders; Request for Proposals; Notice of Solicitation and Proposal For Bids; Bid or Proposal, and, if used, the Bid Booklet;
- 1.1.6 All Addenda issued prior to the receipt of the bids; the Notice of Award; Performance and Payment Bonds, if required; and the Notice to Proceed or the Order to Work.

1.2 Should any conflict occur in or between the Drawings and Specifications, the Contractor shall be deemed to have estimated the most expensive way of doing the Work, unless the Contractor shall have asked for and obtained a decision in writing from the Commissioner of the Agency that is entering into this Contract, before the submission of its bid, as to what shall govern.

ARTICLE 2. DEFINITIONS

2.1 The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Contract, be construed as follows, unless a different meaning is clear from the context:

- 2.1.1 "Addendum" or "Addenda" shall mean the additional Contract provisions and/or technical clarifications issued in writing by the Commissioner prior to the receipt of bids.
- 2.1.2 "Agency" shall mean a city, county, borough or other office, position, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.
- 2.1.3 "Agency Chief Contracting Officer" (ACCO) shall mean a person delegated authority by the Commissioner to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the CCPO, or his/her duly authorized representative.

***“Should any conflict occur in or between the Drawings and Specifications, the Contractor shall be deemed to have estimated the most expensive way of doing the work, unless the Contractor shall have asked for and obtained a decision in writing from the Commissioner, of the Agency that is entering into this Contract, before the submission of its bid as to what shall govern.”***

# DEFENSIVE RECORDKEEPING

- JOBSITE AND HOME OFFICE RECORDS
  - Planned and as-built progress schedules
  - Submittal and approval logs for shop drawings, material samples and testing
  - Daily reports, diaries and inspector reports

# DEFENSIVE RECORDKEEPING

- Memoranda of field meetings and discussions
- As-built plans/drawings
- Photographs and videos of construction operations
- Coordinated field and home office correspondence

# DEFENSIVE RECORDKEEPING

- Time and materials cost records for contract and extra work
- Construction equipment usage logs
- Equipment rental agreements and cost records for contractor-owned equipment

# DEFENSIVE RECORDKEEPING

- Subcontracts and materials purchase orders
- Field overhead cost records
- Home office overhead cost records
- Job cost ledger



REVISIONS TO STANDARD SPECIFICATIONS SECTION 100 - PHASE 7

- b. Identification of all operations that have been, are, or may be delayed.
- c. Explanation of how the Department's acts or omissions are affecting or delaying operations.

**C. Failure to Comply.** Failure of the Contractor to provide such written notice in a timely fashion will be grounds for denial of the dispute and the Department does not have to show prejudice to its interest before such denial is made. In the event the Contractor fails to provide the required written notice within the required time limits, or fails to maintain and submit the records specified above, any claim for compensation shall be deemed waived, notwithstanding the fact that the Department may have had actual notice of the facts and circumstances comprising such dispute and is not prejudiced by such failure of notice or recordkeeping.

**104-07 SITE HOUSEKEEPING.** The contract site shall be cleaned up at the close of each work day, and be left in an orderly condition. Waste and debris shall be removed from the work site and surrounding areas cleaned of debris or waste generated from the work site. Containers shall be provided for the collection and separation of waste, and garbage and other waste shall be disposed of at frequent and regular intervals. Any salvaged material not specified to be disposed of otherwise, shall become the property of the Contractor and shall be removed from the site.

**104-08 MAINTAINING TRAFFIC.** The Contractor shall maintain and protect traffic in accordance with the requirements of the MUTCD and the contract documents.

**A. Closing of Highway.** The legal closing of a highway to public travel in the manner provided by Section 104 of the Highway Law will be done by the Commissioner or by the County Superintendent of Highways when requested by the Department. Not all highways are legally closed during highway construction operations.

When a highway is legally closed and public travel diverted therefrom, adequate warning, danger and direction signs and lights shall be erected and maintained by the Contractor to properly protect and direct public travel by day and by night. Suitable barricades shall also be erected at the ends of such closed sections of highways and large signs displayed indicating such closure. All signs, barricades and other traffic control devices used shall conform to the MUTCD.

**B. Use of Restricted Highway.** With the award of a contract the Commissioner will, unless otherwise specified, designate the section of highway under contract a "Restricted Highway" pursuant to Section 104A of the Highway Law and Section 1625 of the Vehicle and Traffic Law. Pursuant to these legal sections, the Commissioner has the authority to (1) establish maximum and minimum speed limits at which vehicles may proceed along any such Restricted Highway; (2) establish weight and dimension limits of vehicles; (3) regulate the use of such Restricted Highway by pedestrians, equestrians, and animals; (4) regulate parking, standing, stopping, and backing of vehicles; (5) control persons and equipment engaged in work on such highway. When used on such Restricted Highways, all traffic control devices shall be considered as official traffic control devices and shall conform to the MUTCD.

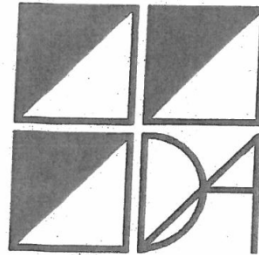
The Commissioner will therefore cause signs indicating such restrictions to be placed at such points as deemed necessary for the safe use of the Restricted Highway. The traveling public and Contractor must observe and comply with these restrictions, as posted, except that the Contractor may be allowed greater latitude with respect to size and weight of construction equipment.

Construction Equipment or vehicles shall be operated on the Restricted Highway as provided under §105-12 *Load Restrictions*.

**104-09 CONTRACTOR'S RETENTION OF RECORDS.** The Contractor shall retain all records for six years following the date of approval of the contract final agreement by the Office of the State Comptroller. Required records shall include all payrolls, accounts, details that comprise its total cost

***“Failure to Comply. Failure of the Contractor to provide such written notice in a timely fashion will be grounds for denial of the dispute and the Department does not have to show prejudice to its interest before such denial is made. In the event the Contractor fails to provide the required written notice within the required time limits, or fails to maintain and submit the records specified above, any claim for compensation shall be deemed waived, notwithstanding the fact that the Department may have had actual notice of the facts and circumstances comprising such dispute and is not prejudiced by such failure of notice or recordkeeping.”***

GENERAL CONDITIONS



DORMITORY AUTHORITY - STATE OF NEW YORK

Main Office  
515 Broadway  
Albany, NY 12207-2964  
(518) 257-3000

New York City Office  
One Penn Plaza, 52<sup>nd</sup> Floor  
New York, NY 10119-0098  
(212) 273-5000

- E. The date of Substantial Completion may be extended by a Change Order or approval of the updated critical path method schedule, by the Owner.
- F. If the Contractor shall neglect, fail or refuse to obtain Substantial Completion within the date specified, or any proper extension thereof granted by the Owner, the Contractor agrees to pay to the Owner for loss of beneficial use of the Work of the Contract an amount specified in the Contract, not as a penalty, but as liquidated damages, for each and every calendar day that the Contractor is in default. Default shall include abandonment of the Work by the Contractor.
- G. Said amount of liquidated damages is agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the Owner would sustain for loss of beneficial use of the Work of the Contract in the event of delay in Substantial Completion, and said amount is agreed to be the amount of damages sustained by the Owner and said amount may be retained from time to time by the Owner.
- H. The foregoing liquidated damages are intended to compensate the Owner only for the loss of beneficial use of the Work of the Contract. In addition, the Contractor shall be liable to the Owner, to the fullest extent permitted by law, for whatever actual damages (other than actual loss of beneficial use) the Owner may incur as a result of any actions or inactions of the Contractor or its Subcontractors including, without limitation, interest expense and carrying costs, liabilities to other Contractors working on the project or other third parties, job extension costs, and other losses incurred by the Owner. The provisions of this paragraph are for the exclusive use of the Owner, and shall not accrue to other contractors or third parties.

ARTICLE 10 – CLAIMS AND DISPUTES

**Section 10.01 - Notification of Claim**

- A. A written notice of Claim shall be delivered concurrently to the Owner's Project Manager and Cost Control Unit by the Contractor within fifteen (15) working days after occurrence of the event giving rise to such Claim or within fifteen (15) working days after the Contractor first recognizes the condition giving rise to the Claim, whichever is earlier. Burden of proving the Owner's receipt of Claim shall be the Contractor's responsibility.
- B. Within ninety (90) working days of the initial notice of Claim, the Contractor shall substantiate the Claim and document the nature of the Claim and provide supporting cost data, Contractor's original cost estimate, P6 Project Management schedule demonstrating alleged impact and correlation to the Claim and a Contractor affidavit stating the following:

*"I hereby certify that the value assigned the work, material and equipment that comprise the Claim, represents the actual value of said work, material and equipment pursuant to the Contract between the undersigned and the Dormitory Authority."*

  - 1. The Contractor shall provide, every thirty (30) days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages.
  - 2. Failure of the Contractor to comply and submit the requirements stated in Section 10.01 may result in rejection of Claim.
- C. The Contractor shall provide the Owner's Project Manager one (1) paper copy of the documented Claim and mail two (2) paper copies of the documented Claim to:

## **“Section 10.01 – Notification of Claim**

- A. A written notice of claim shall be delivered...within fifteen (15) working days after occurrence of the event giving rise to such Claim or within fifteen (15) working days after the Contractor first recognizes the condition giving rise to the Claim, whichever is earlier....**
- B. Within ninety (90) working days of the initial notice of Claim, the Contractor shall substantiate the Claim and document the nature of the Claim and provide supporting cost data, Contractor's original cost estimate, P6 Project management schedule demonstrating alleged impact and correlation to the Claim....**

**1. The Contractor shall provide, every thirty (30) days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages.”**

Dormitory Authority – State of New York  
Cost Control Unit  
515 Broadway  
Albany, NY 12207-2964

- D. The value of any Claim, if allowed, shall be determined by the methods described in Article 7 – Changes in the Work.
- E. Any information representing the actual value of the Work and material contained in the Claim that constitutes False Representation, may subject the undersigned party to criminal charges, including NYS Penal Law Sections 175.35 (Offering a False Instrument for Filing) and 210.40 (False Statement) and/or Title 18 U.S.C. Sections 1001 (False and Fraudulent Statements) and/or Termination of the Contract for Cause and civil prosecution under Article XIII of the State Finance Law – the New York False Claims Act.

**Section 10.02 - Claim for Extra Work**

- A. If the Contractor wishes to make Claim for an increase in the Work of the Contract, or that any action or omission of the Owner is contrary to the terms and provisions of the Contract, a Claim shall be filed in accordance with the procedure herein.
- B. No payment for Extra Work shall be allowed unless directed by a Notice to Proceed executed by the Owner.
- C. **The Contractor's failure to comply with any or all parts of this Article 10 shall be deemed to be:**
1. A conclusive and binding determination on the part of the Contractor that a Notice to Proceed, Work, action or omission does not involve Extra Work.
  2. **A waiver by the Contractor of all claims for additional compensation or damages as a result of a Notice to Proceed, Work, action or omission.**

**Section 10.03 - Damages for Delay**

Compensation by the Owner for any delay or hindrance from any cause whatsoever may be made by the Owner as provided by Section 9.01 E, by extending the date for Substantial Completion as specified in the Contract or by increasing the amount of the Contract. Denial of additional time may not entitle the Contractor to additional costs. No payment for increased cost, charge, expense or damage of any kind shall act as a waiver of the Owner's right to compensate the Contractor solely by extending the date for Substantial Completion. Failure of the Owner to respond in writing to a written request for additional time within thirty (30) days shall be deemed a denial of the request.

**Section 10.04 - Claim for Additional Cost**

If the Contractor wishes to make Claim for an increase in the Contract sum, a Claim shall be filed in accordance with the procedure herein. Denial of additional costs may not entitle the Contractor to additional time.

**Section 10.05 - Continuance of the Work**

Unless otherwise agreed in writing, the Contractor shall proceed diligently with said Claim and with the performance of the Work. The Contractor agrees that no default, act or omission of the Owner shall

**“Section 10.02 – Claim for Extra Work**

**...The Contractor's failure to comply with any or all parts of this Article 10 shall be deemed to be. ... A waiver by the Contractor of all Claims for additional compensation or damages as a result of a Notice to Proceed, Work, action or omission.”**

**“Section 10.03 – Damages for Delay**

**Compensation by the Owner for any delay or hindrance from any cause whatsoever may be made by the Owner as provided by Section 9.01 E, by extending the date for Substantial Completion as specified in the Contract or by increasing the amount of the Contract. Denial of additional time may not entitle the Contractor to additional costs.”**

constitute a material breach of Contract entitling the Contractor to cancel or rescind the same or to suspend or abandon the performance of the Work.

**Section 10.06 - Resolution of Claim**

A. Any resolution or determination by the Owner of a Claim shall be final, binding and conclusive on the Contractor. Within ten (10) working days after receiving notice of the Owner's resolution, the Contractor may file a written statement with the Owner that the Contractor reserves the Contractor's rights under the Contract in connection with the matters covered by said resolution or determination.

B. At its discretion, the Owner may resolve any Claim without waiving its rights under the Contract.

**Section 10.07 - Limitation on Actions**

A. No action or proceeding shall lie in favor of or shall be maintained by the Contractor against the Owner unless such action shall be commenced within six (6) months after the earliest following event:

1. The date the Notice of Substantial Completion is executed by the Owner.
2. Receipt, by the Owner, of the Contractor's final Application for Payment, if no Notice of Substantial Completion is issued.
3. The date of termination if the Contract is terminated by the Owner.

B. Filing an action or initiating a proceeding prior to Substantial Completion may be grounds for Termination for Convenience.

C. No action or proceeding shall be brought against the Owner in any location other than Albany County unless the Owner specifically consents, in writing, to a change of venue.

D. In the event that a judgment is obtained against the Owner, the Contractor agrees to accept no more than three percent (3%) interest, per annum on the judgment amount.

**Section 10.08 - Waiver of Certain Causes of Action**

No action or proceeding shall lie or shall be maintained by the Contractor, nor anyone claiming under or through the Contractor, against the Owner upon any claim arising out of or based upon the Contract, relating to the giving of notices or information.

**ARTICLE 11 -- TERMINATION OR SUSPENSION**

**Section 11.01 - Termination for Cause**

A. In the event that any provision of the Contract is violated by the Contractor or by any Subcontractor, the Owner may serve written notice upon the Contractor and upon the Contractor's surety, if any, of the Owner's intention to terminate the Contract. Such notice shall contain the reasons for the intention to terminate the Contract upon a date specified by the Owner. The Contractor will be allowed an opportunity to show why its Contract should not be terminated for cause. If the violation

**“Section 10.06 – Resolution of Claim**

**...Any resolution or determination by the Owner of a Claim shall be final, binding and conclusive on the Contractor. “**

**Section 10.07 – Limitation on Actions**

**...No action or proceeding shall lie in favor of or shall be maintained by the Contractor against the Owner unless such action shall be commenced within six (6) months after the earliest following event:**

- 1. The date of Notice of Substantial Completion is executed by the Owner.**
- 2. Receipt, by the Owner of the Contractor's final Application for Payment, if no Notice of Substantial Completion is issued.**
- 3. The date of termination if the Contract is terminated by the Owner.”**

**CITY OF NEW YORK**  
**STANDARD CONSTRUCTION CONTRACT**

**December 2013**

ARTICLE 11. NOTICE OF CONDITIONS CAUSING DELAY AND  
DOCUMENTATION OF DAMAGES CAUSED BY DELAY

11.1 After the commencement of any condition which is causing or may cause a delay in completion of the Work, including conditions for which the Contractor may be entitled to an extension of time, the following notifications and submittals are required:

11.1.1 Within seven (7) Days after the commencement of such condition, the Contractor must notify the Engineer in writing of the existence, nature and effect of such condition upon the approved progress schedule and the Work, and must state why and in what respects, if any, the condition is causing or may cause a delay.

11.1.2 If the Contractor shall claim to be sustaining damages for delay as provided for in this Article 11, within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are being incurred, the Contractor shall submit to the Commissioner verified written statements of the details and the amounts of such damages, together with documentary evidence of such damages, ("statement of delay damages") as further detailed in Article 11.6. The Contractor may submit any of the above statements within such additional time as may be granted by the Commissioner in writing upon written request therefor. On failure of the Contractor to strictly comply with all of the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the Contractor may claim in any action arising under or by reason of this Contract shall not be different from or in excess of the statements made and documentation provided pursuant to this Article 11.

11.1.3 Within 60 days of submission of the final verified statement of claims pursuant to Article 44, the Commissioner shall make a determination as to whether a compensable delay has occurred and, if so, the amount of compensation due the Contractor. Notwithstanding the above, the Commissioner may make a determination as to whether a compensable delay has occurred at any time after the Contractor's first submission of a statement of delay damages provided, however, that the amount of compensation due to the Contractor will not be determined until the Commissioner determines that the Work is delayed after the date set for substantial completion.

11.2 Failure of the Contractor to strictly comply with the requirements of Article 11.1.1 may, in the discretion of the Commissioner, be deemed sufficient cause to deny any extension of time on account of delay arising out of such condition. Failure of the Contractor to strictly comply with the requirements of Articles 11.1.1 and 11.1.2 shall be deemed a conclusive waiver by the Contractor of any and all claims for damages for delay arising from such condition and no right to recover on such claims shall exist.

11.3 When appropriate and directed by the Engineer, the progress schedule shall be revised by the Contractor until finally approved by the Engineer. The revised progress schedule must be strictly adhered to by the Contractor.

***“After the commencement of any ....delay***

***11.1.1 Within seven (7) Days after the commencement of such condition, the Contractor must notify the Engineer in writing of the existence, nature and affect of such conditions upon the approved progress schedule and the Work, and must state why and in what respects, if any, the condition is causing or may cause a delay.***

***11.1.2 If the Contractor shall claim to be sustaining damages for delay, by reason of any act or omission of the city or its agents, it shall submit to the Commissioner within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages.”***

27.8 Any termination, cancellation, or alleged breach of the **Contract** prior to or during the pendency of any proceedings pursuant to this article shall not affect or impair the ability of the **Commissioner** or **Contract Dispute Resolution Board** to make a binding and final decision pursuant to this article.

#### ARTICLE 28. RECORD KEEPING FOR EXTRA OR DISPUTED WORK

28.1 While the **Contractor** or any of its **Subcontractors** is performing **Extra Work** on a Time and Material Basis ordered by the **Commissioner** under Article 25, or is performing **disputed Work**, or complying with a determination or order under protest in accordance with Articles 27 and 30, in each such case the **Contractor** shall furnish the **Resident Engineer** daily with three (3) copies of written statements signed by the **Contractor's** representative at the **Site** showing:

28.1.1 The name and number of each **Worker** employed on such **Work** or engaged in complying with such determination or order, the number of hours employed, and the character of the **Work** each is doing; and

28.1.2 The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such **Work** or compliance with such determination or order, and from whom purchased or rented.

28.2 A copy of such statement will be countersigned by the **Resident Engineer**, noting thereon any items not agreed to or questioned, and will be returned to the **Contractor** within two (2) **Days** after submission.

28.3 The **Contractor** and its **Subcontractors**, when required by the **Commissioner**, or the **Comptroller**, shall also produce for inspection, at the office of the **Contractor** or **Subcontractor**, any and all of its books, bid documents, financial statements, vouchers, records, daily job diaries and reports, and cancelled checks, and any other documents relating to showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such **Work**, or in complying with such determination or order, and the amounts expended therefor, and shall permit the **Commissioner** and the **Comptroller** to make such extracts therefrom, or copies thereof, as they or either of them may desire.

28.4 In connection with the examination provided for herein, the **Commissioner**, upon demand therefor, will produce for inspection by the **Contractor** such records as the **Agency** may have with respect to such **Extra** or **disputed Work** performed under protest pursuant to order of the **Commissioner**, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the **Contractor's** claim.

28.5 Failure to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such **Work** or compliance with such determination or order.

#### ARTICLE 29. OMITTED WORK

29.1 If any **Contract Work** in a lump sum **Contract**, or if any part of a lump sum item in a unit price, lump sum, or percentage-bid **Contract** is omitted by the **Commissioner** pursuant to Article 33, the **Contract** price, subject to audit by the **EAO**, shall be reduced by a pro rata portion of the lump sum bid amount based upon the percent of **Work** omitted subject to Article 29.4. For the purpose of determining the pro rata portion of the lump sum bid amount, the bid breakdown submitted in accordance with Article 41 shall be considered, but shall not be the determining factor.

29.2 If the whole of a lump sum item or units of any other item is so omitted by the **Commissioner** in a unit price, lump sum, or percentage-bid **Contract**, then no payment will be made therefor except as provided in Article 29.4.

***“28.1 Extra Work ...disputed Work ...the Contractor shall furnish the Resident Engineer daily with three (3) copies of written statements signed by the Contractor’s representative at the Site showing: ...each Worker...hours employed, and the character of the Work each is doing ...nature and quantity of any materials, plant and equipment furnished or used...”***

***“28.5 Failure to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such Work or compliance with such determination or order.”***

ARTICLE 30. NOTICE AND DOCUMENTATION OF COSTS AND DAMAGES: PRODUCTION OF FINANCIAL RECORDS

30.1 If the Contractor shall claim to be sustaining damages by reason of any act or omission of the City or its agents, it shall submit to the Commissioner within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The Contractor may submit any of the above statements within such additional time as may be granted by the Commissioner in writing upon written request therefor. Failure of the Commissioner to respond in writing to a written request for additional time within thirty (30) Days shall be deemed a denial of the request. On failure of the Contractor to fully comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the Contractor may claim in any action or dispute resolution procedure arising under or by reason of this Contract shall not be different from or in excess of the statements and documentation made pursuant to this article.

30.2 In addition to the foregoing statements, the Contractor shall, upon notice from the Commissioner, produce for examination at the Contractor's office, by the Engineer, Architect or Project Manager, all of its books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, cancelled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract, and submit itself and persons in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.

30.3 In addition to the statements required under Article 28 and this Article, the Contractor and/or its Subcontractor shall, within thirty (30) Days upon notice from the Commissioner or Comptroller, produce for examination at the Contractor's and/or Subcontractor's office, by a representative of either the Commissioner or Comptroller, all of its books of account, bid documents, financial statements, accountant workpapers, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, cancelled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this Contract. Further, the Contractor and/or its Subcontractor shall submit any person in its employment, for examination under oath by any person designated by the Commissioner or Comptroller to investigate claims made or disputes against the City under this Contract. At such examination, a duly authorized representative of the Contractor may be present.

30.4 Unless the information and examination required under Article 30.3 is provided by the Contractor and/or its Subcontractor upon thirty (30) Days notice from the Commissioner or Comptroller, or upon the Commissioner's or Comptroller's written authorization to extend the time to comply, the City shall be released from all claims arising under, relating to or by reason of this Contract, except for sums certified by the Commissioner or Comptroller to be due under the provisions of this Contract. It is further stipulated and agreed that no person has the power to waive any of the foregoing provisions and that in any action or dispute resolution procedure against the City to recover any sum in excess of the sums certified by the Commissioner or Comptroller to be due under or by reason of this Contract, the Contractor must allege in its complaint and prove, at trial or during such dispute resolution procedure, compliance with the provisions of this Article.

30.5 In addition, after the commencement of any action or dispute resolution procedure by the Contractor arising under or by reason of this Contract, the City shall have the right to require the Contractor to produce for examination under oath, up until the trial of the action or hearing before the Contract Dispute Resolution Board, the books and documents described in Article 30.3 and submit itself and all persons in its employ for examination under oath. If this Article is not complied with as required, then the Contractor hereby consents to the dismissal of the action or dispute resolution procedure.

***“30.1 If the Contractor shall claim to be sustaining damages by reason of any act or omission of the City...submit to the Commissioner within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages.”***

***“30.3 Contractor and/or its Subcontractor shall, within thirty (30) Days upon notice from the Commissioner ... produce for examination ...all of its books of account, bid documents [etc.]. Further, the Contractor...shall submit ...for examination under oath...”***

***“30.4 Unless the information and examination required under Article 30.3 is provided...the City shall be released from all claims arising under, relating to or by reason of this Contract...”***



# Interferences w/ Site Access Phase I Construction



Reconstruction of Route 9, Poughkeepsie, NY  
NYSDOT Contract D254568

EX. 10

# Contract BW-10 Rehabilitation of Suspended Spans

## Sequence of Major Construction Activities for Cable Rewrapping

Hoist & Position Footwalks



Unwrap Cable



Remove Cable Strap Bands



Inspect Cable Exterior



Wedge Cable



Inspect Cable Interior



Clean Cable



Rewrap Cable



Apply Red Lead Paste



Reinstall Temporary Strap Bands



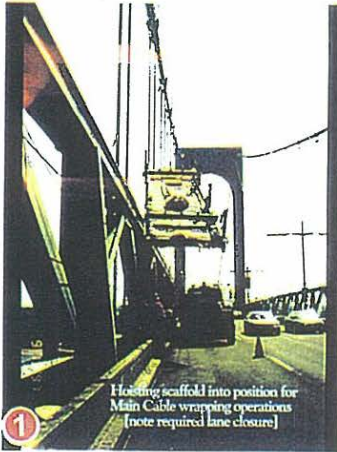
Recompact Cable



Apply Corrosion Inhibitor (Oil)



Repair Cable



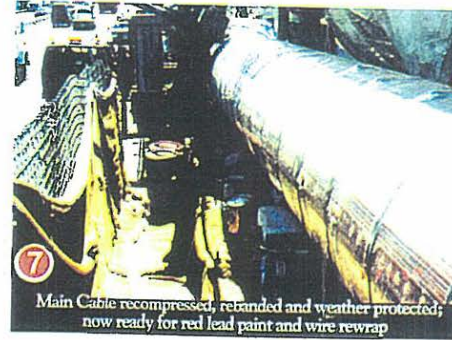
1

Hoisting scaffold into position for Main Cable wrapping operations [note required lane closure]



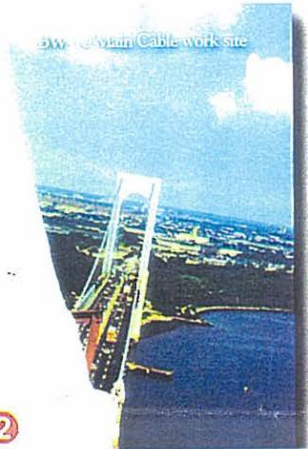
4

Repairing cable with the 'fish' strands (framed in photo for clarity)



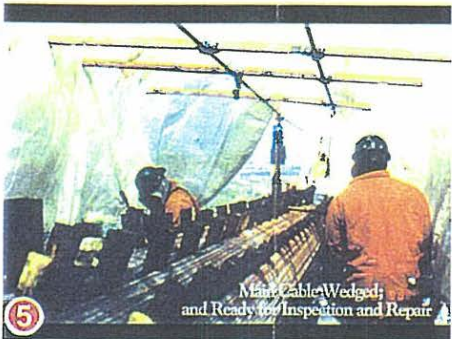
7

Main Cable recompressed, rebranded and weather protected; now ready for red lead paint and wire rewrap



2

View of Main Cable work site



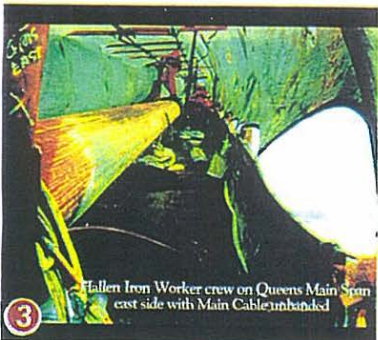
5

Main Cable Wedged and Ready for Inspection and Repair



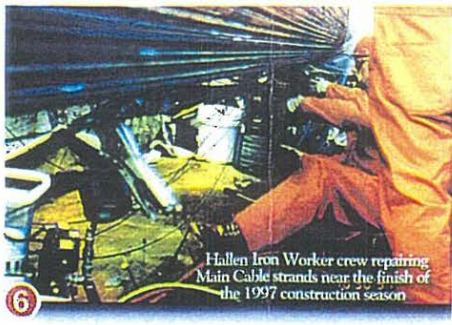
8

Main Cable - inspected, repaired, rebranded and red lead painted - prepared for rewrapping by Two-Wire wrapping machine



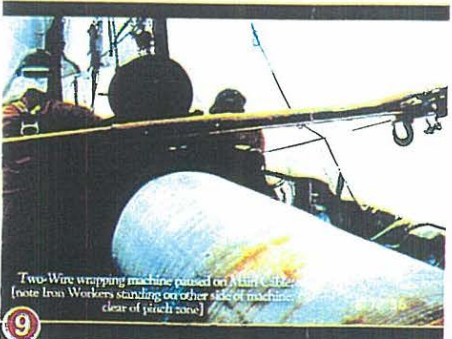
3

Fallen Iron Worker crew on Queens Main Span east side with Main Cable imbranded



6

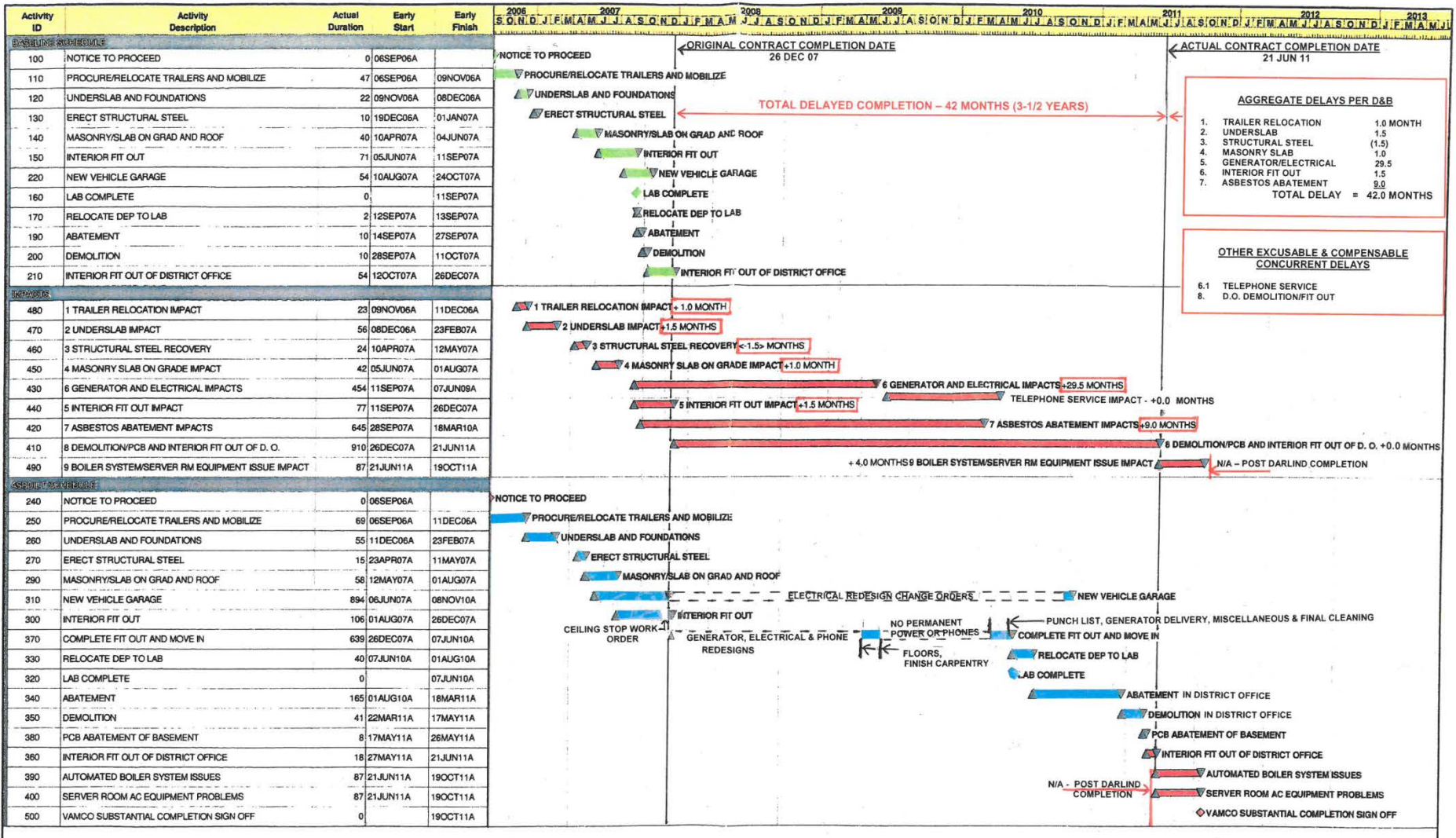
Fallen Iron Worker crew repairing Main Cable strands near the finish of the 1997 construction season



9

Two-Wire wrapping machine passed on Main Cable [note Iron Workers standing on other side of machine - clear of pinch zone]



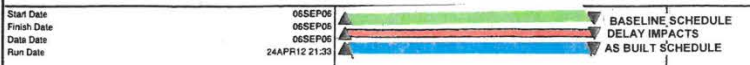


**AGGREGATE DELAYS PER D&B**

1. TRAILER RELOCATION	1.0 MONTH
2. UNDERSLAB	1.5
3. STRUCTURAL STEEL	(1.5)
4. MASONRY SLAB	1.0
5. GENERATOR/ELECTRICAL	29.5
6. INTERIOR FIT OUT	1.5
7. ASBESTOS ABATEMENT	9.0
<b>TOTAL DELAY</b>	<b>= 42.0 MONTHS</b>

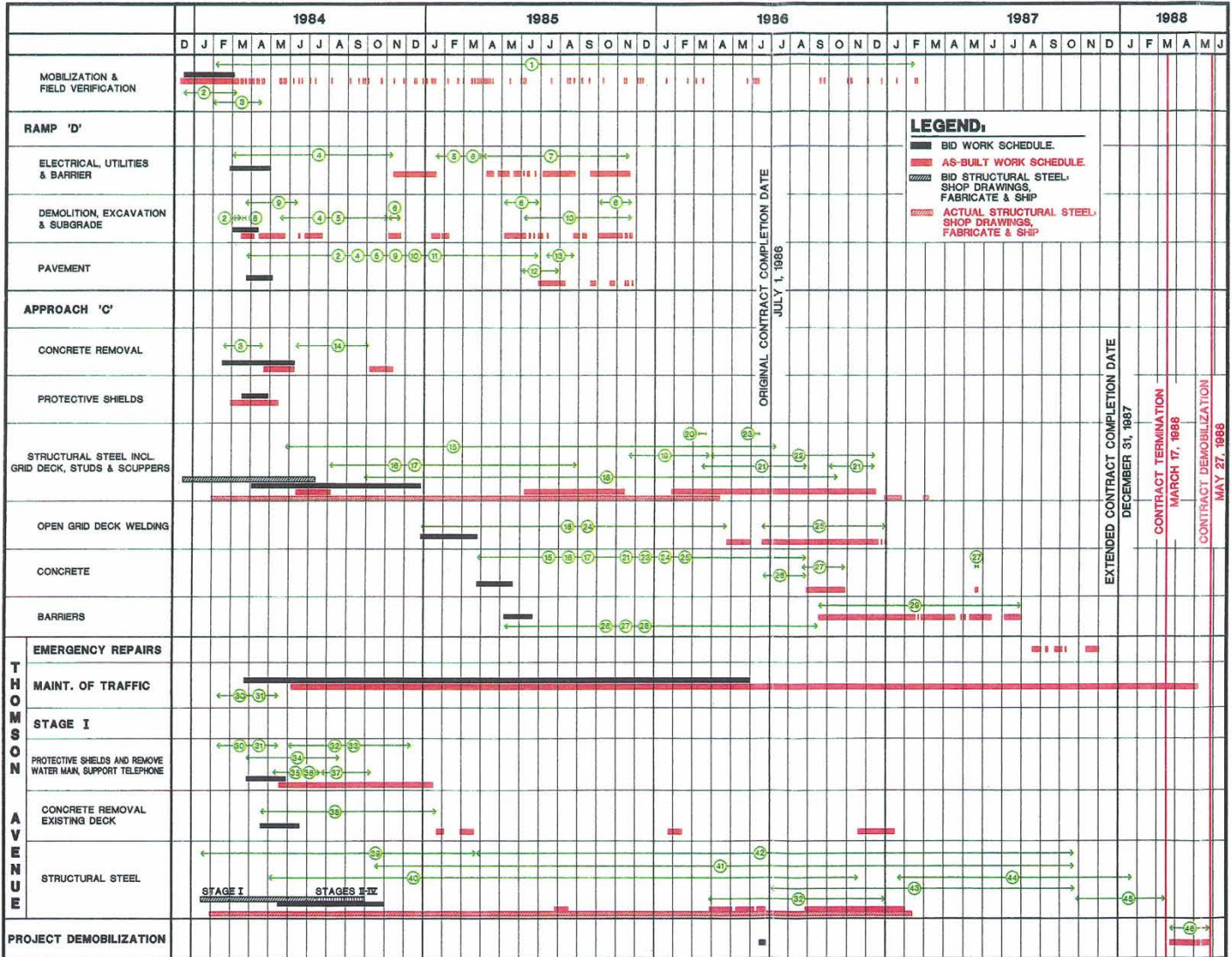
**OTHER EXCUSABLE & COMPENSABLE CONCURRENT DELAYS**

6.1 TELEPHONE SERVICE	
8. D.O. DEMOLITION/FIT OUT	



**REHABILITATION OF QUEENSBORO & THOMSON AVENUE BRIDGES  
TERMINATED NYS DOT CONTRACT NO. D250726**

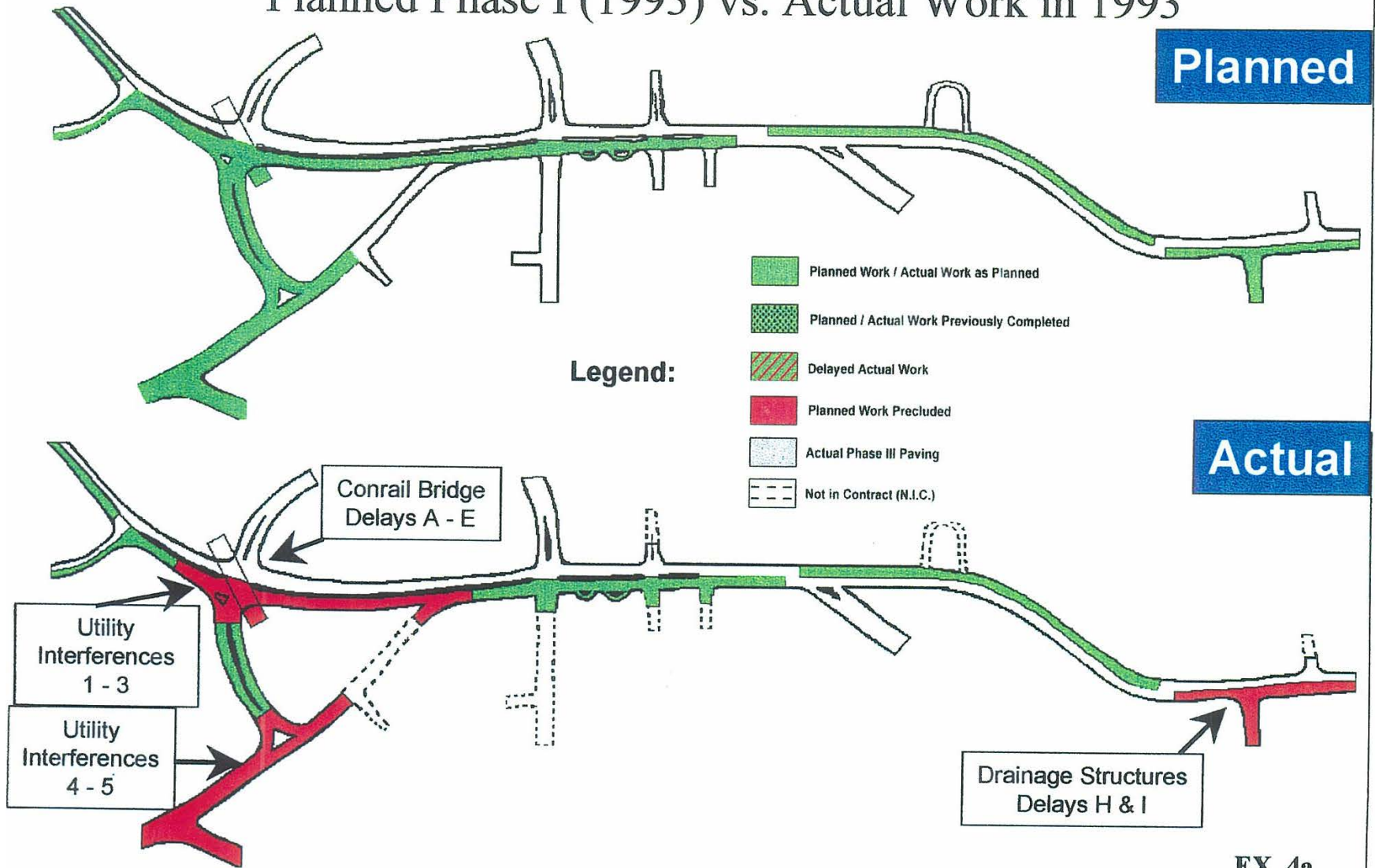
**PLANNED vs. AS-BUILT PROGRESS SCHEDULE - WORK PERFORMED TO TERMINATION**



**LEGEND:**  
 ■ BID WORK SCHEDULE.  
 ■ AS-BUILT WORK SCHEDULE.  
 ▨ BID STRUCTURAL STEEL, SHOP DRAWINGS, FABRICATE & SHIP  
 ▨ ACTUAL STRUCTURAL STEEL, SHOP DRAWINGS, FABRICATE & SHIP

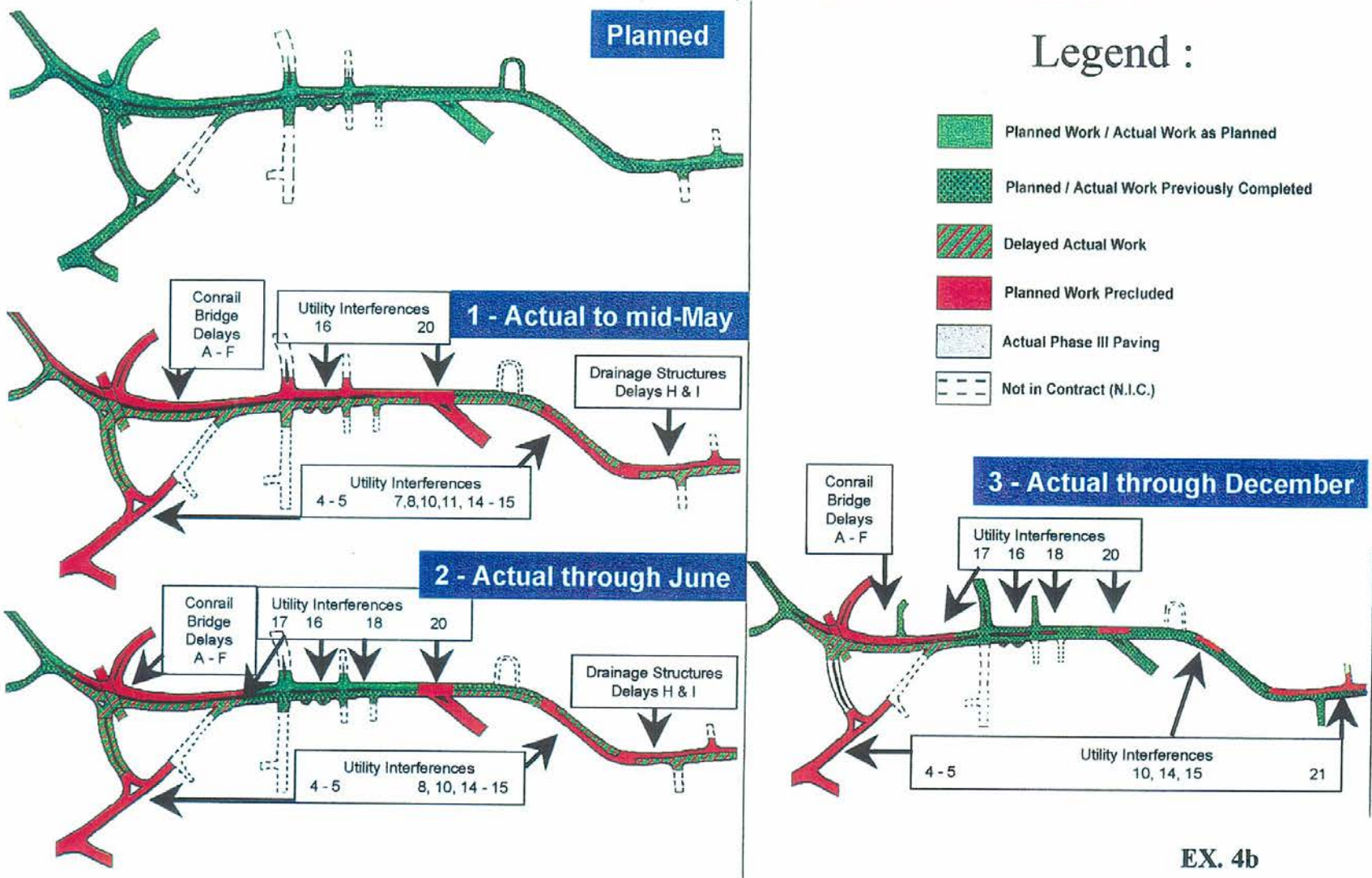
- Notations:**
- 1) Thomson Avenue Bridge field verification survey delay due to unresolved steel design details and nonsequential limited track outages.
  - 2) Delay in closing Ramp 'D' due to lack of NYC traffic agents.
  - 3) Delay in closing Approach 'B' for the Approach 'D' survey, temporary concrete barrier and lighting prior to concrete removal.
  - 4) Delay while awaiting additional tee beam repairs.
  - 5) Painting tee beams.
  - 6) Additional unplanned stripping of tee beams and abutment wall.
  - 7) Intermittent barrier, utility and signage work due Ramp 'D' delays.
  - 8) Delay in tee beam inspection.
  - 9) Delay in asphalting.
  - 10) Flooding due to unconnected upper roadway drainage system.
  - 11) Delay in concrete pour due to heavy rain from unconnected upper roadway drainage system.
  - 12) Delay in regrading for concrete over subway.
  - 13) Repair of existing Belgium block roadways.
  - 14) Delay in access for existing column protection removal Approach 'C'.
  - 15) Shop drawings delay.
  - 16) Facade bracket delay.
  - 17) Extra work in removing facade brackets.
  - 18) Delay in delivering and setting grid deck due to NYS DOT's directive to measure edge of grid deck based on centerline of previously removed median and delay to shop drawing approval.
  - 19) Winter suspension for laying of grid deck.
  - 20) Installation of redesigned clip angles.
  - 21) Extra work for wood haunch fabrication and installation.
  - 22) Extra work for adjustment of grid deck due to using wood haunches rather than SIP's and delayed start of open deck welding.
  - 23) Delay in setting and completing steel bearing piles due to stop work order and lack of decision by NYS DOT and LIRR.
  - 24) Delayed start of open deck welding due to extra work for adjustment of grid deck.
  - 25) Extended duration due to NYS DOT's directives to weld trim bars.
  - 26) NYS DOT's inconsistent rejection of revised concrete mix.
  - 27) Extra work in sandblasting grid deck.
  - 28) Delayed start of barriers due to delay in concrete deck pours.
  - 29) Extended work duration due to revised method of pouring barriers.
  - 30) Delayed approval of protective shield shop drawings.
  - 31) Delayed fabrication of temporary support steel and completion of Approach C protective shield.
  - 32) Extended work duration due to limited track outages.
  - 33) Withdrawal of Amtrak track foreman.
  - 34) Delay in removal of water main and sidewalk demolition while awaiting extra work decision to supply water to Amtrak tower and train washing facilities.
  - 35) Extended duration in excavating and setting/pouring temporary steel footings due to limited nonsequential track outages.
  - 36) Stop work order for installation of temporary plans.
  - 37) Delayed start of vertical protection due to footing delay and installation of temporary steel in nonsequential manner due to limited nonsequential track outages.
  - 38) Delayed start of demolition while awaiting completion of protection shield.
  - 39) Delay in structural steel shop drawings submissions due to unanswered/unresolved estimator inquiries and limited track outages to verify existing dimensions.
  - 40) Extended shop drawings review and approval time.
  - 41) Shop drawings multiple revisions on column repairs/replacements design schemes by NYS DOT.
  - 42) Shop drawings multiple revisions on girder repairs by NYS DOT.
  - 43) Type 88 and 89 repairs extra work concept never implemented by NYS DOT.
  - 44) Delayed resolution of PQL design problem.
  - 45) All new steel extra work concept contemplated but not implemented by NYS DOT under this contract.
  - 46) Extended project demobilization.

# NYSDOT D254568 Route 9 Poughkeepsie, NY Project Planned Phase I (1993) vs. Actual Work in 1993

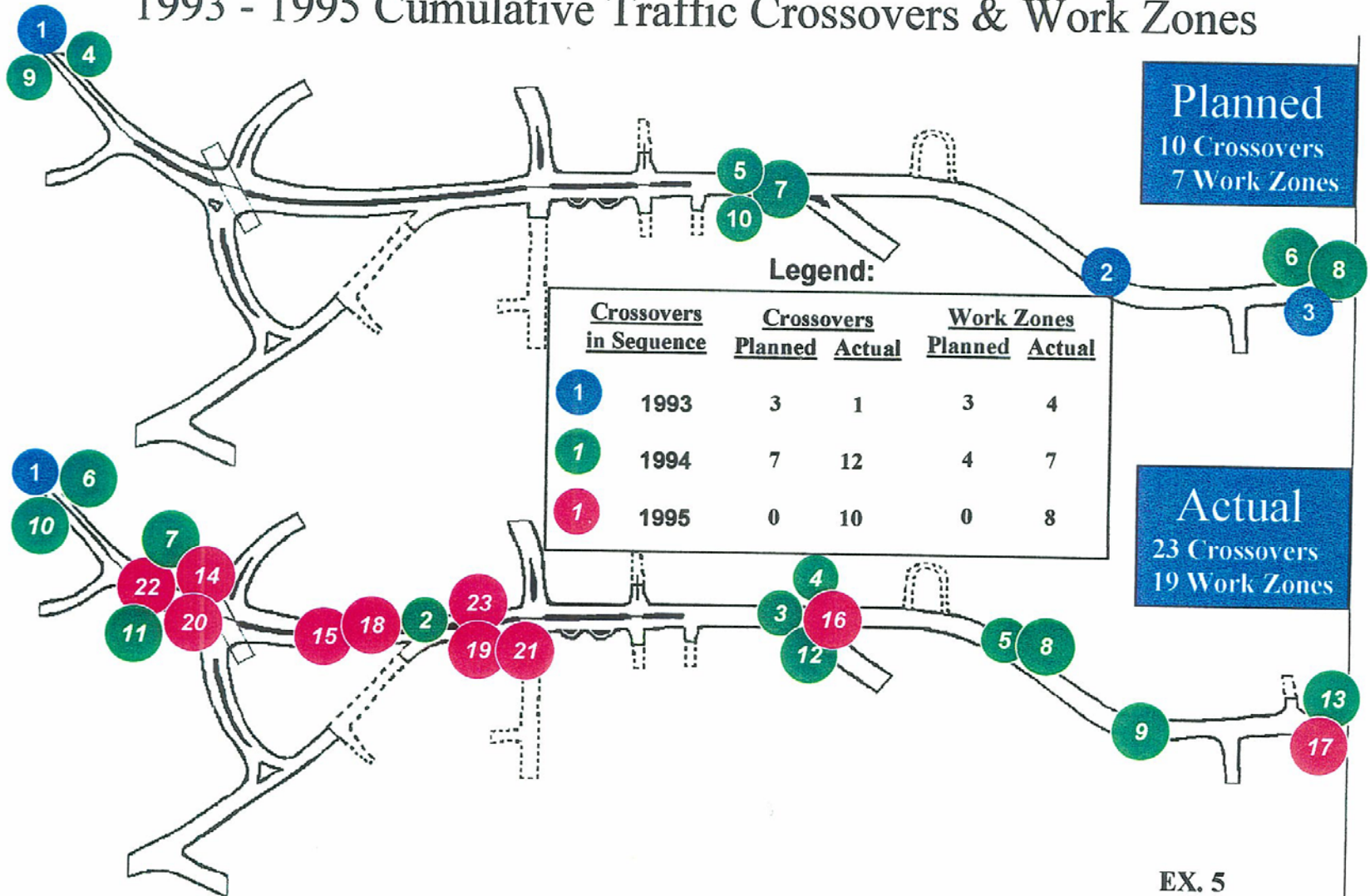


EX. 4a

# NYSDOT D254568 Route 9 Poughkeepsie, NY Project Planned Phase II and III (1994) vs. Actual Work in 1994



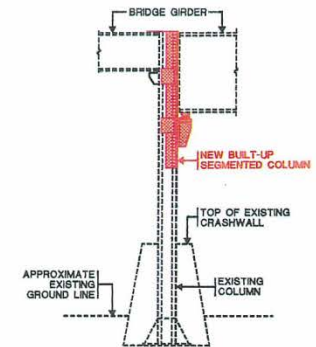
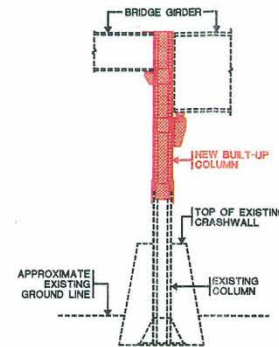
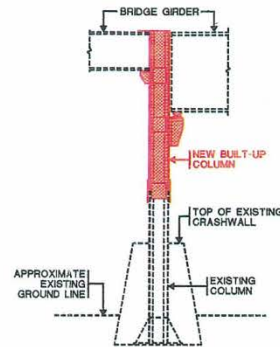
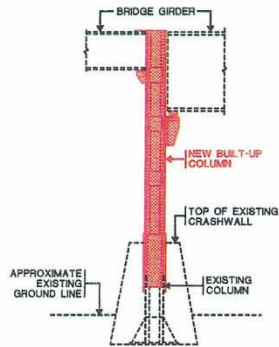
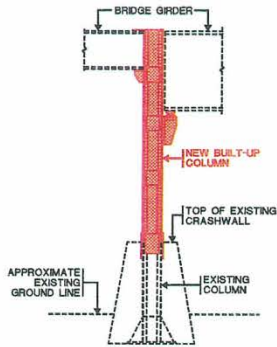
# NYS DOT D254568 Route 9 Poughkeepsie, NY Project 1993 - 1995 Cumulative Traffic Crossovers & Work Zones



EX. 5

**REHABILITATION OF QUEENSBORO & THOMSON AVENUE BRIDGES  
TERMINATED NYSDOT CONTRACT NO. D250726**

**NYSDOT COLUMN REPAIRS/REPLACEMENT SCHEMES  
FOR THOMSON AVENUE BRIDGE FROM  
1983 TO 1988 CONTRACT TERMINATION**



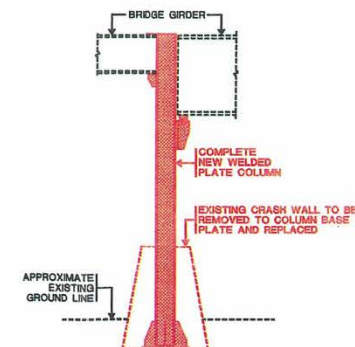
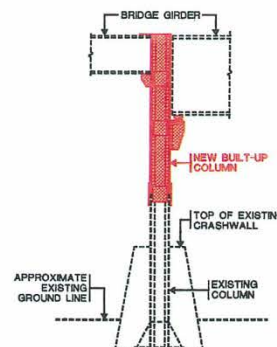
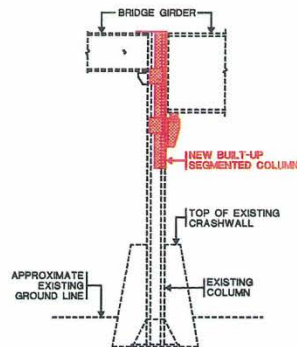
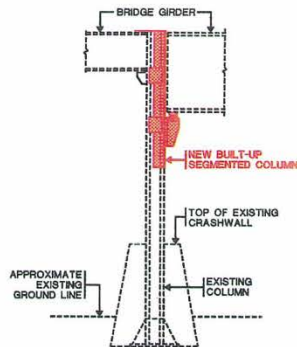
DESCRIPTION	Original Contract Drawings
DATES	June 1983 - November 1987
QUANTITY	2 Columns

DESCRIPTION	Additional Column Replacement Similar to Contract Drawings
DATES	November 1984 - November 1987
QUANTITY	4 Additional / 6 Total

DESCRIPTION	Additional Column Replacement Similar to Contract Drawings
DATES	March 1985 - November 1987
QUANTITY	3 Additional / 9 Total

DESCRIPTION	Additional Column Replacement Similar to Contract Drawings
DATES	May 1986 - November 1987
QUANTITY	6 Additional / 15 Total

DESCRIPTION	Type 98/99 "Repairs" Added to Contract
DATES	June 1986 - December 1986
QUANTITY	46 Columns



DESCRIPTION	Welded Repairs in lieu of Type 98/99 "Repairs"
DATES	December 1986 - February 1987
QUANTITY	46 Columns

DESCRIPTION	Type 98/99 reissued in lieu of Welded Repairs
DATES	February 1987 - April 1987
QUANTITY	46 Columns

DESCRIPTION	"Stub" Replacement in lieu of reissued Type 98/99 Repairs
DATES	April 1987 - November 1987
QUANTITY	46 Columns

DESCRIPTION	All New Steel - Full Depth Replacement
DATES	November 1987 - Termination
QUANTITY	48 Columns

**EXHIBIT 106**

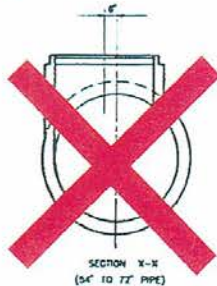
# NYSDOT D254568 Route 9, Poughkeepsie, NY Drainage Structure Redesigns - July 1993 to March 1994



SECTION X-X  
(54" TO 72" PIPE)

ITEM 604500801  
PRECAST MANHOLE BASE  
N.T.S.

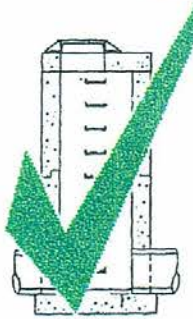
7/26/93 - Special Structure submitted per contract  
8/17/93 - Region 8 Recommends Approval to Albany  
8/30/93 - Lost Drawings Resubmitted



SECTION X-X  
(54" TO 72" PIPE)

ITEM 604500801  
PRECAST MANHOLE BASE  
N.T.S.

09/27/93 - Albany Materials & DQAB reject Region recommendation of "Hybrid" units in favor of standard drainage units, but Thalle not notified



RECTANGULAR DRAINAGE STRUCTURE TYPE A THRU P

9/30/93 Region fails to advise Thalle of Albany standard structure preference; rather, directs alternate source or structure type



SECTION X-X  
(54" TO 72" PIPE)

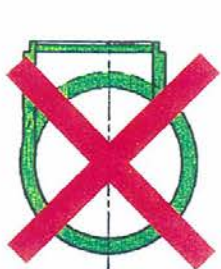
ITEM 604500801  
PRECAST MANHOLE BASE  
N.T.S.



SECTION X-X  
(54" TO 72" PIPE)

ITEM 604500801  
PRECAST MANHOLE BASE  
N.T.S.

10/29/93 Region advises Thalle that acceptable special "wetcast" structures are available from four named manufacturers



SECTION X-X  
(54" TO 72" PIPE)

ITEM 604500801  
PRECAST MANHOLE BASE  
N.T.S.

11/22/93 Thalle advises Region that none of four suppliers can provide single mold "wetcast" structure



SECTION X-X  
(54" TO 72" PIPE)

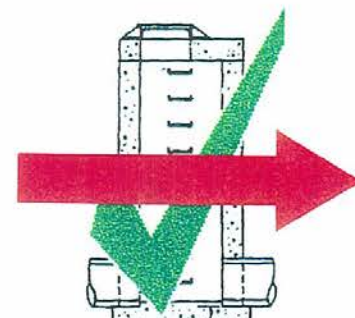
ITEM 604500801  
PRECAST MANHOLE BASE  
N.T.S.

Dec. 1993 Region approves Sept. 1993 original contract design, using "wetcast" in lieu of hand pack joint



RECTANGULAR DRAINAGE STRUCTURE TYPE A THRU P

01/19/94 Region acknowledgement of Leonard bankruptcy and approval of standard structure as preferred by Albany 9/27/93



RECTANGULAR DRAINAGE STRUCTURE TYPE A THRU P

Mid-March 1994 Region approval of standard structure shop drawings and completion of redesign of drainage alignment and profile

EX. 16

