

**STANDARD GENERAL PROVISIONS
DIVISION 10
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**STANDARD GENERAL PROVISIONS
DIVISION 10**

SECTION 10.01 DEFINITIONS

In these Contract Documents, the following words or expressions shall have the meaning given below:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACS	Alaska Communications Systems
ADA	The Americans with Disabilities Act of 1990. Public Law 101-336, which prohibits discrimination on the basis of disability by private and public entities in places of public accommodation.
ADEC	State of Alaska, Department of Environmental Conservation
ADOT/PF	State of Alaska, Department of Transportation and Public Facilities
ANSI	American National Standards Institute
API	American Petroleum Institute
APWA	American Public Works Association
ASA	American Standard Association
ASTM	American Society for Testing and Materials
ATM	Alaska Traffic Manual
AWS	American Welding Society
AWWA	American Water Works Association
CVSS	City of Valdez Standard Specifications and Standard Details
GCI	General Communications Incorporated
MUTCD	Manual of Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NESC	National Electric Safety Code
OSHA	Occupational Safety and Health Act

Addendum (Addenda) - Written or graphic communications issued prior to the execution of the Contract which modify or interpret the Bidding Documents and become part of the Contract Documents upon execution of the Contract.

Additional Work - Work not specifically provided for in the Contract as awarded, but which is consistent with the original scope of Work and a price for similar work is provided in the Contract.

Bid - The written proposal of the Bidder, on the form furnished, for the Work contemplated.

Bidder - Any individual, firm, partnership, corporation, or combination thereof formally submitting a Bid for the Work contemplated, and acting directly or through an authorized representative.

Bidding Documents - The Invitation to Bid, Special Provisions, Specifications, Forms, Schedules, Bidder's Checklist, proposed Contract Documents, and all Addenda.

Bid Guarantee - The security furnished by the Bidder as a guarantee to enter into a Contract for the Work contemplated if the Bidder is awarded the Contract.

Change Order/Contract Amendment - A written agreement entered into between the Contractor and the Owner to amend the Contract Documents, or to otherwise provide for unforeseen work and other matters not contemplated or adequately provided for in the Contract Documents.

City – City of Valdez, Alaska.

Contract – The Contract is comprised of all the Documents listed in the “Table of Contents” of the Contract book or projected manual including any addenda. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract can only be amended by Change Order.

Contract Date - The date the Contract is executed by the Owner.

Contract Completion Date - The calendar date specified in the proposal for the full completion of all Work required by the Contract Documents, except as otherwise provided in the Contract.

If a number of calendar days is specified in the proposal for the completion of the Contract, the Contract Completion Date will be those specified number of days after the effective date of the Notice to Proceed, including authorized time extensions.

Contract Item (Bid Item, Pay Item) - A specifically described unit of Work for which a price is provided in the Contract.

Contractor - The individual, firm, corporation, partnership or joint venture executing the Contract and performing the Work under the terms of the Contract Documents. The Contractor shall not act as an Agent of the Owner.

Council – The Valdez City Council.

Days -

Calendar: Unless otherwise designated in the **SPECIAL PROVISIONS**, days as used in the Contract Documents shall be understood to mean calendar days.

Working: A working day is defined as any day on which the Contractor is required to work by the Contract Documents or any other day not otherwise defined herein as a non-working day.

Non Working: A non-working day is defined as Sunday, a recognized holiday, a day on which the Contractor is specifically required by the **SPECIAL PROVISIONS** to suspend construction operations, or a day on which a suspension order is in effect. Recognized holidays shall be: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. When any of the above days falls on a Saturday, the preceding Friday shall be counted as a holiday. When any of the above days falls on a Sunday, the following Monday shall be counted as a holiday.

Drawings - The maps, plans, sheets, or other graphic illustrations listed and referred to in the Contract:

Engineer - The Engineer identified in the Notice to Proceed as being the authorized representative of the Owner.

Extra Work - Work not within the original scope of Work but is determined by the Engineer to be essential for the satisfactory completion of the Contract.

Final Acceptance Date - The date on which the Work in its entirety has been constructed, inspected, and accepted pursuant to the provisions of Article 5.26 - Final Inspection.

Furnish - Purchase and deliver to the Project.

Indicated - Shown on the Drawings, noted on Drawings, specified, or a combination thereof.

Inspector - The authorized representative of the Engineer or Owner assigned to observe the Work.

Install - Set in place and make usable.

Liquidated Damages - The amount prescribed herein to be paid to the Owner, or to be deducted from any payments due or to become due the Contractor, for each day's delay in completing the whole or any specified portion of the Work beyond the time allowed in the Contract or as extended by Change Order.

Necessary - Needed, as reasonably inferred from the Contract Documents, in order to make the Work complete and available for use.

Notice-to-Proceed - The written communication, issued by the Owner to the Contractor authorizing him to proceed with the Work, which identifies the Engineer and establishes the time of commencement and date of completion.

Notice-to-Resume - The written notice issued by the Engineer which terminates a period of suspension of Work, reinstates the counting of Contract time and requires the Contractor to resume Contract Work.

Or Equal - Whenever a material, article, or piece of equipment is identified on the Drawings or in the Project Manual by reference to manufacturers' or vendors' names, trade names, catalog numbers, etc., it is intended merely to establish a standard; and any material, article, or equipment of other manufacturers and vendors which will perform in an equal or better manner the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed will not require a change in the related Work and is, in the opinion of the Engineer, of equal or better substance and function.

Owner - The City of Valdez. Owner does not include those City employees, such as the Building Official or Fire Marshal and their staffs, who enforce certain building, health and safety, and fire codes.

Performance and Payment Bond - The form of security approved by the City, furnished by the Contractor and his Surety guaranteeing the complete and faithful performance of all the obligations and conditions placed upon the Contractor by the Contract.

Product Data - Brochures, illustrations, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.

Project - The total construction of which the Work performed under the Contract Documents may be the whole or a part.

Provide - Furnish and install; perform all Work necessary to complete the Work.

Record Drawings – Detailed drawings which accurately depict all changes in location (both horizontal and vertical), material, equipment, and other elements of Work accomplished by the Contractor. The drawings shall also depict the horizontal and vertical locations of all other utilities and obstructions encountered during construction. Final elevations and locations shall be clearly marked with actual dimensions, or existing dimensions shall be noted with “ASB” if no changes occur.

Samples - Physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work or a product will be judged.

Shop Drawings - All drawings, diagrams, illustrations, schedules, and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier, or distributor which illustrate the equipment, material, or some portion of the Work.

Special Provisions - That portion of the Specifications entitled **SPECIAL PROVISIONS** setting forth conditions or requirements unique to the Work.

Specifications - The directions, requirements, explanations, terms, and provisions pertaining to the Work.

Street Closure - Any action which renders one or more lanes of a street unusable to vehicular traffic.

Subcontractor - Any individual, firm, corporation, partnership or joint venture acting for or on behalf of the Contractor in the performance of a part of the Contract. This does not include those working for hire or suppliers of material or equipment.

Substantial Completion Date - The date upon which the improvements which are the subject matter of the Contract have been inspected and in the opinion of the Engineer are essentially completed and available for the Owner's beneficial use for the purpose and in the manner intended by the Contract Documents and all required testing has been satisfactorily completed.

Surety - The Company or Association which is bound with and for the Contractor for the acceptable performance of the Contract and for the payment of all obligations arising out of the Contract. Where applying to the Bid Guarantee, it refers to the Company or Association which will forfeit the sum of the Guarantee when the Bidder fails to execute the Contract after the Bid is accepted by the City.

Technical Specifications – Any referenced sections of CVSS Divisions 20 through 90 of the C.V.S.S and all specifications included in the project manual

Time and Material Work - Work performed by the Contractor at the written direction of the Engineer for which no item is provided in the Contract and for which no unit price or lump sum basis can be agreed upon.

Utility Company - The person, corporation, company, agency, or other entity which furnishes service through, operates, or owns, a conduit, pipe, wire, cable, or other transmission line for the purpose(s) of petroleum and petroleum products, electricity, sanitary sewer, communications, water, natural gas, and storm sewer.

Winter Suspension - The period of time through which no field work is accomplished due to adverse winter weather conditions as permitted by Division 10, Article 5.24.

Work - Work shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of all the duties and obligations imposed by the contract.

Working Titles – Working titles which are adjectives or have masculine genders such as “workman” and “flagman” or are pronouns such as “he,” “his,” and “him” are utilized in the Contract Documents for the sake of brevity and are intended to refer to persons of either gender.

Written Notice - A written communication delivered in person to the individual or to a member of a firm, or agency, or to an officer of the corporation, or agency for whom it is intended, or sent by mail to the business address stated in the Contract Documents. An electronic transmission such as a facsimile (fax) or via computer modem shall not be considered as written notice.

SECTION 10.02 BIDDING REQUIREMENTS AND CONDITIONS

Article 2.1 Examination of Bidding Documents and Site

The Bidder shall examine carefully the site of the proposed Work and the Bidding Documents before submitting a Bid. The submission of a Bid shall be an admission that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements and accuracy of the Bidding Documents.

The City assumes no responsibility for any understanding or representations concerning conditions made by any of its officers, agents, or employees prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Bidding Documents or Addenda.

When soils boring data is provided by the Bidding Documents, the Bidder shall assume responsibility for any conclusions he may draw from such data. He shall be responsible for obtaining and analyzing such additional data as he may require and shall be responsible for conclusions drawn from that information.

By submitting a bid, the Contractor declares that he has carefully examined the contract documents, that he has full knowledge thereof and that he has investigated the site and satisfied himself as to the conditions affecting the Work, including, but not limited to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electrical power, roads, and uncertainties of weather, physical conditions at the site including all existing utilities, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the Work. The Contractor further declares that he is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to the encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all prior exploratory work, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the Work.

Article 2.2 Interpretation or Correction of Bidding Documents

Bidders shall notify the Engineer promptly of any error, omission, or inconsistency that may be discovered during examination of the Bidding Documents and the proposed construction site. Requests from Bidders for interpretation or clarification of the Bidding Documents shall be made in writing to the Engineer and shall arrive at least three (3) working days prior to the date for opening Bids. Oral questions may be presented at a pre-bid conference if one is provided for in the Bidding Documents. Interpretations, corrections, or changes, if any, to the Bidding Documents shall be made by Addendum. Bidders shall not rely upon interpretations, corrections, and changes made in any other manner, including orally at the pre-bid conference. Interpretations, corrections, and changes shall not be binding unless included in an Addendum.

Article 2.3 Preparation and Submission of Bids

Bids shall be submitted on the forms furnished and must be manually signed. Bids shall be submitted in a sealed envelope addressed as indicated in the Invitation to Bid and on which the Invitation Number is plainly marked.

Bidders must quote on all items, unless specifically allowed to bid on only a portion of the items within the Invitation to Bid and they are warned that failure to do so shall disqualify the Bid. When quotations on all items are not required, Bidders should insert the words "no bid" in the space provided for any item where no quotation is made. If erasures or other changes appear on the forms, each such erasure or change must be initialed by the person signing the Bid.

Bids shall specify a unit or lump sum price, typed or written in ink, for each bid item called for. If the bid is submitted in both words and figures and there is a discrepancy between the written words and figures, the written words shall govern. In case of error in the extension of prices, the unit price will govern. Bids may be rejected if they show any omissions, alteration of the forms, additions not called for, conditional or alternate bids not called for, qualified bids, or irregularities of any kind.

Article 2.4 Bid Guarantee

Each Bid shall be accompanied by a certified check, cashier's check, or Bid Bond, in the amount of five percent (5%) of the total amount of the Bid. Bid Guarantees for the three (3) low Bidders will be held until the Contract is executed. All other Bid Guarantees will be returned within seven (7) days of the bid opening. Power-of-Attorney for the person signing the Bid Bond for the Surety must be submitted with the Bid Bond.

Article 2.5 Disadvantaged and Woman Owned Business Enterprises (DBE/WBE) Requirements

Each Bid shall be accompanied by those (DBE/WBE) Forms provided by the Engineer and as required by the bidder's checklist.

SECTION 10.03 AWARD AND EXECUTION OF CONTRACT

Article 3.1 General

The provisions of Section 10.03 are intended to be supplemental to, and not to replace, The code of the City of Valdez.

Article 3.2 Receipt and Opening of Bids

Bids shall be submitted to the City of Valdez prior to the time of opening specified in the Invitation to Bid and the exact date and time of receipt of Bids will be recorded. Late Bids will not be considered, but will be held unopened until the time of award and then returned to the Bidder unless other disposition is requested or agreed to by the Bidder. Time of Bid receipt will be determined by the time stamp of the City of Valdez.

Facsimile bids will not be considered. Modification by facsimile of bids already submitted will be considered if received in writing by the Engineer prior to the time of bid opening fixed in the Invitation to Bid. Facsimile modifications shall not reveal the amount of the original or revised bid. Modifications shall state a plus or minus to the affected bid item.

No liability will attach to the City of Valdez for the premature opening of or the failure to open a Bid not properly addressed and identified.

Bids may be withdrawn on written or facsimile request received from Bidders prior to the time specified for bid opening.

If more than one Bid is offered by any one party, by or in the name of his clerk, partner, or other person, all such Bids will be rejected. A party who has quoted prices to a Bidder is not thereby disqualified from quoting prices to other Bidders, or from submitting a Bid directly for the Work.

Article 3.3 Bidder Qualifications

The Engineer reserves the right to determine whether or not a Bidder is a responsible contractor. The Engineer may require the Bidder to submit such information as he/she may deem necessary to determine a bidder's responsibility. Failure or refusal on behalf of the Bidder to submit the required information, in whole or in part, may be grounds for the Purchasing Officer to determine the Bidder as non-responsible.

The Engineer shall determine whether a Bidder is responsible on the basis of any or all of the following criteria:

- The skill and experience demonstrated by the Bidder in performing contracts of a similar nature;
- The Bidder's record for honesty and integrity;
- The Bidder's capacity to perform in terms of facilities, personnel and financing;

The Bidder's past performance under City contracts. If the Bidder has failed in any material way to perform his obligations under any contract with the City, the Bidder may be determined as a non-responsible Bidder.

A Bidder's representations concerning his qualifications will be construed as a covenant under the Contract. Should it appear that the Bidder has made a material misrepresentation, the Owner shall have the right to terminate the Contract for the Contractor's breach, and the Owner may then pursue such remedies as provided in the Contract Documents or as provided at law or equity.

Any determination that a Bidder is non-responsive or non-responsible will be made by the Engineer. Such determination will be made in writing to the Bidder setting forth the reasons for such determination and the Bidder's right to request a review of this determination by the City Council.

If a Contractor has had a contract terminated by the Owner for cause as provided in Section 10.05 Article 5.28, the Contractor may not be allowed to bid on the owner's future contracts for a period of two (2) years. This two- (2-) year period shall commence from the date of the termination of the Contractor by the Owner. All bidders shall hold a valid Alaska Contractor's license per Alaska Statute AS 08.18.

Article 3.4 Action on Bids

The City reserves the right to reject any and all Bids, and to waive any informalities and irregularities in Bidding or award of the Contract.

The City may reject any bid which is unbalanced if it is in the best interest of the City to do so. A bid is unbalanced when, in the opinion of the Engineer, it allocates a disproportionate share of costs or profit, or both, to the price of one (1) or more items of Work and reduces the share of costs or profit, or both allocated to the price of another item or items of Work, and if there is a reasonable possibility that the bid will not result in the lowest overall cost of the Work to the City.

Unless otherwise stated in the Bidding Documents, the Contract, if awarded, shall be awarded to the responsible Bidder who submits the low responsive Bid. When the Bidding Documents contain a basic bid and alternates, only the total of the basic bid and the alternates to be awarded shall be used to determine the low Bidder.

When the Bidding Documents contain a basic bid and additive alternates, the low Bidder will be determined by the lowest combination of the basic bid and as many additive alternates as may be selected within the funds available. Additive alternates will be chosen in the order listed in the Bid. However, the Engineer may bypass any additive alternate whose selection would cause the Contract to exceed the funds available.

When the Bidding Documents contain deductive alternates, the low Bidder will be determined by the lowest basic bid. If the lowest basic bid exceeds the funds available, the low Bidder will be determined by eliminating deductive alternates in the order listed in

the Bid until the award can be made within the available funds. The Engineer may bypass any deductive alternate to maximize the available use of available funds.

The amount of the Contract shall be the total sum of the amounts computed from the estimated quantities and unit prices and/or the lump sum awarded by Engineer and specified in the Contract.

On all Bids, Notice of Award or rejection will be given within forty-five (45) days of Bid opening. The notice will be in writing and signed by the Engineer. A Notice of Award, and no other act of the Engineer or its representatives, constitutes an acceptance of a Bid. The acceptance of a Bid shall bind the successful Bidder to execute the Contract.

Article 3.5 Bonds and Insurance

If the amount of the contract is \$100,000 or more, the successful Bidder shall furnish the Engineer a Performance and Payment Bond each in the full amount of the Contract and shall maintain the Bond in force during the continuance of this Contract including the one-year (1) warranty period. For projects less than \$100,000, the requirement for Performance and Payment Bond is deleted. The Bond shall be for the faithful performance of this Contract in all respects including, but not limited to, payments for all materials and labor. All alterations, extensions of time, additional Work and other changes authorized by the Contract Documents may be made without securing the consent of the Surety or Sureties. The bond shall be with a good and sufficient corporate surety acceptable to the City and a Power-of-Attorney for the person signing the Bond for the Surety must be submitted with the Bond.

The successful Bidder shall furnish the Engineer a certificate of insurance pursuant to the provisions of Article 6.9 Engineer.

City of Valdez.

Article 3.6 Execution of Contract

The Bidder whose Bid is accepted shall execute the Contract and furnish the required bonding, insurance, non-collusion affidavit, and proof of current registration, if a corporation, within ten (10) working days after Notice of Intent to Award of the Contract is issued.

The Contract shall be considered executed by the successful Bidder when two (2) copies of the Contract, signed by an authorized representative of the Contractor, and the required bonds, insurance certificate, the non-collusion Affidavit and proof of current registration are received by the Engineer. Failure or neglect of the Contractor to execute the Contract within the time specified may result in a forfeiture of the Bid Guarantee and award of the Contract to the next lowest Bidder.

The Owner will execute the Contract within twenty (20) working days after execution by the Contractor as set forth above. The date the Contract is executed by the Owner is the

Contract Date. The rights and obligations provided for in the Contract shall become effective and binding upon the parties as of the Contract Date.

The Contractor will be supplied upon request with one (1) set of the Contract Documents exclusive of the City of Valdez - Standard Specifications (C.V.S.S.). The Contractor may obtain any additional documents required from the Engineer by compensating the Owner for the cost of the printing involved.

The Notice-to-Proceed will be issued within seven (7) working days after the Contract Date unless otherwise specified in the **SPECIAL PROVISIONS**. The effective date of the Notice to Proceed shall be within ten (10) working days of the Contract Date. The Engineer or his authorized representative, the Engineer's address, and the completion date shall be designated in the Notice-to-Proceed.

Article 3.7 Contractor's Warranty

The Contractor shall warranty all materials and workmanship for one (1) year from the Final Acceptance Date except when a different period is identified in the **SPECIAL PROVISIONS**. This warranty shall require the Contractor to remedy promptly, without cost to the Owner, any and all defects in material and workmanship including any consequential damages resulting from defective materials or workmanship. All warranty work shall be subject to the same contract provisions, including materials, quality of work, authority of the Engineer and inspection, as provided for in the original work; however, all such work shall be at the sole cost of the Contractor. If the defect, in the opinion of the Engineer, is of such nature as to demand immediate repair, the Owner shall have the right to take corrective action and the cost thereof shall be borne by the Contractor. If the contract includes work in different geographic locations, then the work in each location may be accepted and the warranty period for that location may begin independent of the completion of the work in the other locations.

Should the Contractor fail to remedy any such defects within five (5) working days of the date of written notice of defect the Owner may, with its own forces or any other reasonable means available to the Owner, repair or cause the repair to be made and make claim against the Contractor or the Contractor's Surety.

SECTION 10.04 SCOPE OF WORK

Article 4.1 Intent of the Contract Documents

The intent of the Contract Documents is to provide for the execution and completion of the Work in its entirety. Except as otherwise specifically provided herein, the Contractor shall furnish all permits, transportation, handling, storage of materials, labor, tools, implements, machinery, supplies, materials, water, heat, utilities, and incidentals, and shall do all things necessary to perform and to complete the Work.

When words that have a well-known technical or trade meaning are used to describe Work, materials, or equipment, such words shall be interpreted in accordance with that meaning.

Reference to Standard Specifications, manuals, or codes of any technical society, organization, or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest Standard Specification, manual, code or Laws or Regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated.

However, no provisions of any referenced Standard Specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the respective duties and responsibilities of the Owner, the contractor, or the Engineer nor any of their consultants, agents, or employees from those set forth in the Contract documents.

With reference to the Drawings, the order of precedence is as follows:

1. Figures (numerals) govern over scaled dimensions.
2. Detailed Drawings govern over general Drawings or standard details.

Article 4.2 Interpretation of Contract, Specifications, and Drawings

The Contract Documents are intended to be complementary and to describe and provide for a complete Work and a requirement occurring in one is as binding as though occurring in all.

In cases of conflict in the requirements of the Contract Documents such conflict shall be reconciled by the acceptance of the following order of precedence for the various Contract Documents: (1) the Contract; (2) the Bid; (3) **SPECIAL PROVISIONS**; (4) the Technical Specifications; (5) the Drawings; (6) the Standard General Provisions; and (7) specifications incorporated by reference in any of the above.

The apparent silence of the Specifications and Drawings as to any detail or the apparent omission from them of a detailed description concerning any point, shall be regarded as

meaning that only the best general practice is to prevail and that only approved material and workmanship of first quality are to be used.

The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Engineer any error, inconsistency or omission he may discover including any requirement which may be contrary to any law, ordinance, rule, regulation, or order of any public authority bearing on the performance of the Work.

The Contractor shall take no advantage of any errors or omissions in the Specifications and Drawings or of any discrepancies in or between same. Work knowingly performed by the Contractor as a result of an error or omission in the Drawings and Specifications where such error or omission is not called to the attention of the Engineer shall be at the Contractor's risk and expense.

All Contractor-initiated requests for interpretation or clarification of the Contract documents shall be accompanied by a completed Design Clarification/Verification Request (DC/VR) form. Each request shall clearly and completely state the basis for lack of clarity in the Contract documents and shall refer to the applicable specifications, plan sheets and details that give rise to the request. If not provided in the Contracts documents, a copy of the DC/VR form shall be obtained from the Engineer. Engineer shall respond to the DC/VR in writing within ten (10) working days.

Article 4.3 Estimates of Quantities

The quantities shown in the Bid, whether for a unit price contract or a combination of a lump sum contract and unit price contract, are approximate only and are not to be taken to be either representations or warranties. Since quantities in the Contract Documents are estimates only, actual quantities may increase or decrease without constituting a change in the Work unless the increase or decrease involves a major bid item which varies by more than twenty-five percent (25%) as provided below. The cumulative variations in quantities together with other changes in the Work shall not increase the contract amount by more than \$20,000, without prior City Council approval.

Article 4.4 Changed Conditions

The Contractor shall promptly, within two (2) working days and before such conditions are disturbed, notify the Engineer in writing of: (1) subsurface conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract. The Engineer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractors cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract modified in writing accordingly.

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required above. However, the time prescribed may be extended by the Engineer.

No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

If the parties are unable to agree on the terms of an equitable adjustment, the Engineer may order such work done and pay for such work as provided in 4.5, 4.6, and 7.3 and allow such additional time for performance as he may deem proper. If the Contractor does not agree with such adjustments, he may make claim under Article 5.21, Claims for Additional Compensation.

Article 4.5 Increased Quantities

The Owner reserves the right to increase the quantity of any bid item. There may be an adjustment of unit prices of major bid items where the actual quantity of the item is increased by more than twenty-five percent (25%) of the estimated quantity. A major bid item is defined as any item where the total bid price of the item exceeds twice the average bid price of an item. Twice the average bid price of an item is calculated by the following formula:

$$\frac{T}{I} \times 2$$

where "T" equals total bid amount of the schedule in which the item appears and "I" equals the number of items in the schedule in which the item appears.

If a major bid item increases by more than twenty-five percent (25%), the unit price for one hundred and twenty-five percent (125%) of the estimated quantity shall remain as set forth in the Bid and the price for additional quantities above the one hundred and twenty-five percent (125%) for the said item may be negotiated for a greater or lesser amount upon the demand of either the Owner or the Contractor.

A unit price increase may be allowed only if the Contractor can substantiate to the satisfaction of the Engineer that he incurred increased unit cost in providing the additive quantities over and above that unit cost incurred in providing the estimated quantity of the bid item. A negotiated increase in price may include a maximum of ten percent (10%) for overhead and profit on increased costs.

A negotiated increase in price on any item shall not preclude a claim for increased costs on other items of the Work under Article 5.21 Claims for Additional Compensation.

A decrease in unit price for that quantity over one hundred and twenty-five percent (125%) of the estimated quantity shall be allowed only if the Owner establishes that the unit cost for such additional quantities was less than the unit cost for the estimated

quantity. For this purpose, the Contractor shall provide job records as required by the Engineer.

Article 4.6 Decreased Quantities

The Owner reserves the right to decrease the quantity of any Bid item. There may be an adjustment of unit prices of major Bid items where the actual quantity of the item is decreased by more than twenty-five percent (25%) of the estimated quantity and the aggregate total of all quantity revisions decreases the total contract amount by more than ten percent (10%). Change orders for extra work will not be used for this calculation. A major bid item is defined in Article 4.5 Increased Quantities.

If a major bid item qualifies for a unit price adjustment, the Contractor shall be allowed, upon request, an allowance for overhead costs for the decreased quantity. The allowance shall be ten percent (10%) of the amount represented by the difference between the actually installed quantities and seventy-five percent (75%) of the contract estimated quantities. Payment of this allowance does not preclude a claim for increased costs on other items of the Work under Article 5.21 - Claims for Additional Compensation.

The provisions of this article shall not apply to reduced quantities resulting from the termination of the contract for cause or for the Owner's convenience.

Article 4.7 Temporary Utilities

The Contractor shall provide and pay all cost for temporary utilities including gas, water, sanitary sewer, telephone, and electricity necessary to perform the Work. The Contractor shall pay for these costs during periods of suspensions of work. The Owner does not represent that utility service is available to the site.

The Contractor shall provide temporary heat, including fuel and power, as required to protect materials and Work from the elements. The Contractor shall provide and maintain temporary toilets and shall furnish drinking water for all those connected with the Work.

Article 4.8 Reference Stakes and Surveying

Horizontal and vertical reference locations maybe indicated in the plan drawings. It shall be the Contractor's responsibility to determine that all construction surveying Work required is completed in strict conformity with C.V.S.S. Division 65 Standard Construction Specifications for Construction Survey.

At various points throughout the Work, the Contractor's operations may be expected to disturb existing survey monuments and referenced points. If these items are disturbed by the Contractor, they shall be replaced at the Contractor's expense. Any existing survey monuments, or reference points which, in the judgment of the Engineer, are outside the limits of the Work area and which are disturbed or destroyed by the Contractor will be replaced at the Contractor's expense.

Article 4.9 Disposal Sites

Except as otherwise stated in the **SPECIAL PROVISIONS**, the Contractor shall make his own arrangements and assume all costs in connection with disposal sites. Disposal sites shall be located and maintained in such a manner as to prevent a public nuisance.

The Contractor shall obtain written permission from the property owner or owners for such disposal sites and shall furnish the Engineer with a copy of this permission. The written permission shall specifically provide that the property owner will not hold the City, its employees, agents, or consultants liable for use of or damage to this property. The Contractor shall be held liable for any trespass and property damage incurred outside of the disposal site.

Article 4.10 Protection of Persons and Property

The Contractor shall conduct the Work in a manner to prevent hazards to the public and property.

The Contractor shall be solely and continuously responsible, twenty-four (24) hours per day, seven (7) days per week until contract completion for the following:

- (a) Erecting and maintaining, as required by existing conditions and progress of work, all safeguards for safety and protection including barricades, danger signs, traffic control devices, and other warnings against hazards.
- (b) Providing reasonable access at all times for emergency units such as police, fire, and disaster.

During periods of suspension of work, refer to Section 10.05, Article 5.24, Suspension of Work for areas of responsibilities.

Article 4.11 Private Property in Right-of-Way

Unless otherwise specified in the plans and specifications, when fences, trailers, sheds, machinery, or other miscellaneous personal property is located within the right-of-way, and/or utility easements, and interferes with construction, the Engineer shall contact the property owner to remove said property. If the property owner cannot be contacted or does not move the item(s) of personal property, the Engineer shall notify the Contractor, in writing, to remove the item(s) from the right-of-way to the property owner's lot or as otherwise directed by the Engineer. When removing personal property from the right-of-way, the Contractor shall take care not to damage the items. Any damage to the item(s) as a result of construction under this contract shall be repaired or the items replaced in kind by the Contractor at no cost to the City.

Unless otherwise stated in the plans and specifications, payment for the removal of personal property from the right-of-way and the setting of these items down on the owner's lot shall be an incidental item and no separate payment shall be made.

Payment for additional work such as resetting fences or restoration of personal property items to their original or alternate locations shall be as specified in the plans and specifications. If payment for such additional work is not specified in the plans and specifications, the Contractor shall negotiate the amount of payment with the Engineer prior to removal of the item.

Article 4.12 Public Convenience and Access

The Contractor shall conduct the Work in such a manner as to cause minimum inconvenience to pedestrians and vehicular traffic and to persons conducting commercial enterprises or residing along the route of Work. Without prior approval of the Engineer, entrances or driveways of all kinds shall not be blocked for more than three (3) hours. Temporary pedestrian bridges, ramps, or culverts shall be provided and maintained at entrances and shall be adequate in width and strength for the service required. All Work involved in providing for construction, maintenance, and use of entrances and driveways is the responsibility of the Contractor and shall not be paid for separately and shall be considered incidental to the lump sum and/or unit prices contained in the Contract Documents. The Contractor shall take all necessary steps to ensure that safe and reasonable access is provided to private property. The Contractor shall at all times comply with this Article while constructing this project. Under no circumstances shall the public be denied access to the adjoining lots unless proper notification to the property owners and/or tenants has been provided and an alternate access has been provided and approved by the Engineer. It is the Contractor's responsibility to provide the property owners and/or tenants written notification no less than forty-eight (48) hours prior to any closure of access.

The Contractor shall, prior to the commencement of Work, submit any written agreements between the Contractor and property owners regarding access and use of private property within the project limits for any purposes associated with this Project. Any such agreements shall indemnify the City from any and all actions that result from activities of the Contractor.

If the Work of the Contractor is delayed because of any construction and/or transportation activities of nearby construction, whether City or private projects regardless of whether authorized by the Owner, the Contractor shall not be entitled to additional compensation from the Owner, but will be entitled to an extension of time to the extent that such delay was unavoidable through reasonable efforts on the Contractor's part. Except as to a possible entitlement to such an extension of time, the Contractor shall hold harmless, defend, and indemnify the Owner from and against any and all claims, damages, losses, and expenses, including attorneys' fees, by the Contractor or third-parties, arising directly or otherwise out of the construction and/or transportation activities as indicated above.

Article 4.13 Street Closures

The Contractor shall conduct his operations so as to offer the least possible interference to vehicular traffic. The Contractor's requests for street closures or partial closures must be reviewed by the Engineer and then submitted for approval to the Police and Fire

Departments. Emergency units shall be provided vehicular access at all times. No two adjacent parallel streets may be closed at the same time. Construction operations involving a closure of an arterial street will not commence until after 9:00 a.m. Requests for arterial street closures will be made sufficiently in advance of the planned closure to allow a minimum of forty-eight- (48-) hour advance notice to the public.

When a street closure or partial closure is approved, it shall be the Contractor's responsibility to provide and maintain adequate detour routes, either by appropriately signing existing streets or by the construction of temporary roadways. Detour routes using existing streets must be left in a condition at least equal to their condition immediately prior to use as a detour. Temporary detours shall be capable of carrying two lanes of traffic at a minimum speed of twenty miles per hour. The Contractor shall be responsible to provide, erect, and maintain barricades, fences, signs, flags, lights, flagmen, and any other devices necessary to insure traffic safety. Placement and design of signs, barricades, and other devices to be furnished and used by the Contractor shall conform with the standards specified in the latest edition of the *Alaska Traffic Manual* (ATM) prepared by the Alaska Department of Transportation and Public Facilities. Traffic signs no longer required shall be promptly removed. Where operations are performed in stages, only those devices necessary to the stage in progress shall be visible. It shall be the Contractor's responsibility to maintain all barricades, signs, and lights throughout the night hours, weekends, holidays, or other periods of inactivity. Should the Contractor fail in this maintenance obligation, the Owner may erect the necessary barricades, signs, and lights, and deduct the cost thereof, or a minimum of \$100, from payments due the Contractor. Action by the Owner to erect barricades, signs, or lights does not relieve the Contractor of his indemnification obligations set forth in Article 6.10 - Indemnification.

The Contractor shall prepare and submit four (4) copies of an acceptable Traffic Control Plan (TCP) to be employed during construction for review and approval. The TCP shall be delivered to the Engineer within ten (10) days of the effective date of the Notice-to-Proceed, or five (5) days before commencement of Work, whichever is the earlier date. The Engineer will review and accept or reject the plan within five (5) working days of the submission. Successive submittals will also be reviewed within five (5) working days.

The TCP shall conform with the standards in the latest edition of Part VI of the Manual of Uniform Traffic Control Devices (MUTCD), and shall also conform to the requirements in the latest edition and supplements of the ATM. When conflict exists between C.V.S.S. and the ATM, the requirements of C.V.S.S. and these **SPECIAL PROVISIONS** shall govern.

If the Work will be done within a State of Alaska right-of-way as identified in the **SPECIAL PROVISIONS**, the TCP shall also be submitted to the State of Alaska Department of Transportation and Public Facilities Regional Traffic Engineer for acceptance and approval.

Providing the TCP to the Engineer and the State of Alaska Department of Transportation and Public Facilities Regional Traffic Engineer shall be the responsibility of the Contractor

and shall be paid for under the bid item "Traffic Maintenance" and no separate payment shall be made.

In the event of and prior to suspension of Work, the Contractor shall make passable and shall open to traffic all such portions of the project and temporary roadways or portions thereof as may be agreed upon between the Contractor and the Engineer for the temporary accommodation of necessary traffic during the anticipated period of suspension. This shall apply to access to all private drives and aprons at the end of each work day.

When, in the opinion of the Engineer, traffic maintenance is deficient, inadequate, improper, or conditions are such that safety is adversely affected, the Contractor will be notified in writing by the Engineer. Such notification shall be accompanied by a statement of the corrective action to be taken. If the Contractor fails to comply with such instruction, the Engineer may stop any or all Work on the project until satisfactory, corrective action is taken. In the event that the Contractor neglects to take prompt action after receipt of the notice, the Engineer shall order such Work, as deemed necessary to ensure public safety, to be accomplished by outside forces. The cost of this Work shall be deducted from monies due the Contractor.

Article 4.14 Maintenance and Drainage

The Contractor shall be responsible for maintaining all detour routes, haul routes, streets under construction, and all ditches, water courses, existing drainage patterns, siltation control, gutters, sidewalks, walkways and bike trails affected by the Work until the Final Acceptance Date. This includes but is not limited to shaping, grading, and dust control. The Contractor shall be responsible for maintaining existing drainage patterns disturbed as a result of construction, including re-establishment of drainage ditches, swales and gutter flowlines to their preconstruction condition, grade, and elevation.

If the Contractor fails to make timely repairs, the City of Valdez will make necessary repairs and the Contractor shall bear all cost of materials, labor and expenses thereof.

All streets, drainage ditches, swales, water courses, gutters, sidewalks, walkways and bike trails, used by the Contractor or interrupted by his Work, shall be restored to their pre-existing condition. The Contractor shall construct and maintain any drainage and siltation control necessary to accommodate water caused by his pumping or dewatering operations, and shall contain the water to prevent inconvenience to pedestrian and vehicular traffic.

Any culverts, swales, catch basins or storm drains damaged during construction shall be repaired or replaced by the Contractor at no expense to the owner.

All costs associated with maintenance of drainage patterns and repair or replacement of drainage ditches, swales, catch basins, storm drains, gutter flowlines, and any other drainage appurtenances shall be incidental to the Contract or to the item under construction, and no separate payment shall be made.

Article 4.15 Utilities

Locations of utilities shown on the Drawings are not exact. Above-ground utilities have been field located. Below-ground utilities are shown as depicted on record documents prepared by others. The Owner shall not be held liable for damages to utilities incurred during construction due to deficiencies or omissions on the Drawings or these provisions. At least five (5) days prior to commencing work, the Contractor shall contact all local utility companies to obtain underground utility locates. The Contractor shall exert due care to prevent damage to utilities. Should a utility be damaged, the Contractor shall immediately notify the utility company and shall have the damage repaired at no cost to the Owner. It is expressly understood that the utility has the right to do work or have its Contractor do work in connection with making repairs to the utility lines damaged by the Contractor. If any utility company determines that a utility has to be temporarily raised, lowered, moved, guyed, shore, braced, or otherwise protected during construction, it shall be done at the expense of the Contractor and to the satisfaction of the utility company.

The Contractor shall be responsible for maintaining all utility service connections whether marked on the Drawings or not. In addition, the Contractor shall repair or replace all utility service connections (at his own cost) that are damaged by his actions.

At a sufficient distance, prior to encountering a known obstacle or tie-in to an existing conduit, pipe or manhole, the Contractor shall expose and verify the exact location of the obstacle, pipe, or manhole so that proper alignment and/or grade may be determined before the pipe sections are laid in the trench and backfilled. The Contractor shall notify the Engineer of the results of this verification, prior to commencement of the Work affected by results of verification, so that any modification to the contract drawings or supplementary instructions may be supplied to the Contractor. The Contractor shall allow the Engineer one complete working day to review the verification results and provide any design modifications or supplementary instructions necessary. No additional payment shall be made to the Contractor for this Work.

The cost incurred for removal and alignment of backfilled pipe sections due to improper verification methods shall be borne by the Contractor.

Unless otherwise specified in the SPECIAL PROVISIONS, it is the intent of the Contract Documents that utilities will not be relocated to facilitate construction. If the Engineer determines that an existing utility must be relocated because it is in direct conflict with the facility being constructed, the existing utility will be relocated by the Utility Company at no charge to the Contractor.

The Contractor shall be responsible for coordinating the Work with any work of a Utility Company and shall not interfere with the initial installation, relocation, reconstruction, or replacement of any utility including the making of necessary service connections by the utility company. If the Work of the Contractor is delayed because of any acts or omissions of the utility company, the Contractor shall not be entitled to additional compensation from the owner but may be entitled to an extension of time.

The Contractor is hereby notified that certain utility companies may have facilities within the project limits.

The Contractor is further notified that certain utility companies may be relocating their facilities and installing crossings within the project limits. Except to the extent specified within this Article, the Contractor shall have no right to proceed first with the Work under this Contract in advance of any utility company.

All existing key boxes, cleanouts, manholes, etc. shall be located and exposed by the contractor and carefully protected during the course of the Work. The Contractor, in conjunction with the Engineer, shall check all utilities prior to the start of the construction and record their condition. All manholes, catch basins, cleanouts, etc. will be checked for damage resulting from the Contractor's operation prior to final acceptance by the Owner. The Contractor is responsible for restoring all existing utilities to preexisting conditions, and shall coordinate with the affected utility in having any necessary repairs completed.

If adjustments are made to City of Valdez water or sanitary sewer facilities, the Contractor shall schedule and complete a final acceptance inspection of said facilities prior to scheduling this project's prefinal inspection.

No buried utilities shall be covered until the owner utility has inspected it.

The Contractor shall accomplish all Work in close proximity to electrical or telecommunications facilities in conformance with clearance requirements in accordance with the National Electrical Safety Code (NESC) and the established codes and guidelines of the affected utilities, as well as applicable federal and state laws and regulations.

If excavation is required within five (5) feet of utility poles, pad-mounted equipment or concrete ductwork, shoring is required. Prior to shoring, the Contractor shall provide the serving-utility with the proposed method in writing for utility approval.

The Contractor shall comply with Alaska Statute A.S. 18.60.670. If equipment, tools, or machinery, must work in proximity closer than ten (10) feet, the requirements of A.S. 18.60.680 shall be complied with before Work can proceed.

The Contractor shall notify and coordinate with all affected utilities for all Work in close proximity, as defined by the respective utility, to these facilities.

The requirements of this Section shall be considered incidental to the Contract and no separate payment shall be made. Further, the Contractor shall hold harmless, defend, and indemnify the Owner from and against any and all claims, damages, losses, and expenses, including attorney fees, by the Contractor or third-parties arising directly or otherwise out of any conflict between the Work under this Contract and any claim, interference, or delay for whatever reasons.

Article 4.16 Utility Connections

Whenever the Contract Documents require permanent connections to be made to utility lines, the Contractor shall, unless otherwise specified in the **SPECIAL PROVISIONS**, be responsible for making the connection to the utility line, or have the Utility Company make the connection, at the point(s) indicated on the Drawings. The Contractor shall be responsible for making all necessary applications to the Utility Company, for paying all fees and for performing any Work associated with making the connections which is not performed by the Utility Company. The Contractor is not responsible for bringing utility lines to the point of connection. The Contractor shall pay all costs for utility service prior to the Date of Substantial Completion.

Article 4.17 Record Documents

The Contractor shall maintain Record Documents on the job site consisting of a complete set of blue-line plans, survey line and grade books, and other Contract Documents. All changes in location (both vertical and horizontal), material, equipment, or other changes in the Work and other horizontal and vertical locations of other utilities encountered shall be recorded (on Record Documents) and kept current on a daily basis in conformance with the requirements of C.V.S.S. Section 65.02 Construction Surveying, Article 2.14 Asbuilt Surveys and Record Drawings. Design dimensions, elevations, and grades that are not changed shall be identified as being accurate by noting "ASB" adjacent to the design value. The Record Documents shall be made available to the Engineer at all times. The Contractor shall provide horizontal and vertical locations of all water service and sewer service connections at the property line or lease lot line, including swing ties and offsets to property or lease lot corners.

The "RECORD" set of prints shall include two (2) or more swing ties from prominent, permanent features to show the location of each installed water service and sewer service connection. Swing ties are to be as close to perpendicular to each other as possible. When property or lease lot corners are in, they shall be used as swing tie referenced points.

All additions and corrections shall be neat, clean, and legible. If additional plan sheets are required, the Contractor shall prepare them on reproducible mylar of like material and size as the original plans. Plans damaged or lost by the Contractor shall be replaced by Contractor at his expense and to the satisfaction of the Engineer.

The Engineer will review all Record Documents for completeness and conformance to the standards stated above. The Contractor shall make all corrections, changes, additions, and deletions required to conform to the standards. The Engineer may periodically review the status of the Record Documents during the course of the Work. Failure of the Contractor to keep the Record Documents current and in the required condition will be considered cause for additional withholding from the progress payments as provided in C.V.S.S. Section 10.07 Measurement and Payment, Article 7.5 Progress Payments.

Approved final Record Documents, bearing certification by the Contractor that the Record Documents are a complete and accurate representation of the project as constructed, shall be delivered to the Engineer within thirty (30) days after Substantial Completion or prior to final acceptance of the project, whichever is earlier.

All Work associated with the development, preparation, and presentation of all Record Documents shall be incidental to the improvements being constructed, and no separate payment will be made.

Article 4.18 Operating and Maintenance Manuals

Along with the final Record Documents, the Contractor shall provide to the Engineer prior to the pre-final inspection four (4) sets of Operating and Maintenance Manuals for all items of material and equipment as required by the Technical Specifications. In addition to the requirements in the Technical Specifications and **SPECIAL PROVISIONS**, the Manuals shall contain an Index, by Specification Section; a key plan which graphically locates items of equipment; a list of manufacturers, suppliers and distributors with addresses and telephone numbers; and a list of local representatives with addresses and telephone numbers.

Article 4.19 Temporary Erosion Control During Construction

The Contractor shall provide all temporary erosion control measures necessary during construction for the prevention of water pollution, erosion, and/or siltation. These measures are for the protection of all streams, lakes, ponds, wetlands and tidal waters.

The Contractor is directed to Alaska State regulations (18ACC70) which states that no person may conduct an operation which causes or contributes to a violation of water quality standards set forth in 19AAC70.010 through 18ACC70.032.

Unless a temporary erosion control plan during construction is specifically called out and included in the drawings and other contract documents, the Contractor shall provide a plan describing temporary erosion control measures to be employed during construction. The plan shall be delivered to the Engineer within ten (10) days of the effective date of the Notice-to-Proceed or five (5) days before the commencement of Work, whichever is the earlier date. The Engineer will review and accept or reject the plan within five (5) working days of submission. Successive submittals will also be reviewed within five (5) working days. The accepted temporary erosion control measures shall be in place immediately after Contractor mobilization and before any excavation begins.

Temporary erosion control measures include such items as silt fences, sedimentation ponds, intercepting embankments and channels, check dams, rock lining, mulching, jute matting, seeding sodding, and other erosion control devices as required. Where erosion is expected to be a severe problem, clearing, grubbing, grading, filling and other operations shall be scheduled and performed such that permanent erosion control measures follow immediately. Permanent erosion control measures are those work items

specified elsewhere in the Contract Documents which are intended to provide permanent erosion control such as paving, seeding and other measures as required.

Temporary erosion control measures shall remain in place and in good working condition until Work is complete under the Contract. The continued maintenance of these temporary erosion control items and replacement of damaged items shall be the ongoing responsibility of the Contractor. Under C.V.S.S. Section 10.05 of these Contract Documents, the Engineer may suspend Work if the Contractor fails to carry out the requirements of the temporary erosion control plan. After suspension of the Work, the Owner may perform or contract the performance of the erosion control measures and deduct those costs from the Contractor's progress payments.

Payment for this Work shall be considered incidental to the Contract and no separate payments shall be made.

Article 4.20 Submittal List

The Contractor shall complete, submit, and/or comply with all requirements as indicated in the Submittal List located in the bidding documents. The Contractor is hereby advised the Submittal List is not an all-inclusive document. The Submittal List does not relieve the Contractor from his obligation to comply with all submittals, certifications, or other requirements as specified in C.V.S.S., these specifications, or the plans. The Contractor is responsible to determine that all submittals, certifications, and/or requirements are met, whether or not specifically addressed in the Submittal List.

SECTION 10.05 CONTROL OF WORK

Article 5.1 Authority of the Engineer

The Engineer shall be the Owner's representative and shall observe the Work in progress on behalf of the Owner and will be identified at the time the Notice to Proceed is issued. The Engineer shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. Visits and observations made by the Engineer shall not relieve the Contractor of his obligation to conduct comprehensive inspections of the Work and to furnish materials and perform acceptable Work, and to provide adequate safety precautions, in conformance with the intent of the Contract. The Work will not be considered completed until a Certificate of Completion is issued by the Engineer. The Contractor shall at all times carry out and fulfill the written instructions and written directions of the Engineer regarding the Contract Documents.

The Engineer shall have the authority to order changes in the Work requiring an adjustment in the Contract amount and/or time. Such changes in the Work shall be performed in accordance with any supplemental Drawings and instructions as the Engineer may issue. Any single change in the Work, or cumulative changes in the Work, in excess of \$20,000 will require council approval prior to issuance of the change order.

The Engineer shall in all cases make determinations on any and all questions which may arise concerning the quality, quantity, and acceptability of materials furnished, the Work performed, the rate of progress of the Work and the interpretation of Contract Documents.

If the Contractor determines that instructions, clarifications, or directions issued by the Engineer constitute a change in the requirements of the Contract Documents, he may make claim as provided under Article 5.21 - Claims for Additional Compensation.

Article 5.2 Prosecution of the Work

The Work shall not be commenced until written Notice-to-Proceed has been received by the Contractor. The Work shall be commenced within ten (10) days after the effective date specified in the Notice to Proceed and shall be prosecuted vigorously and continuously.

Article 5.3 Construction Progress Schedule and Schedule of Values

Within ten (10) days after the effective date of the Notice-to-Proceed and prior to commencement of the Work, the Contractor shall submit, to the Engineer, a Construction Progress Schedule in the form of a time-scaled bar chart, the elements of which shall be the Divisions and Sections of the Project Manual as a minimum. Additional elements may be added to represent other significant features of the Work such as the submittal schedule, material procurement, plant and equipment procurement, and freighting. Weather and ground condition restraints, Work suspensions and other significant

influences on the Contract amount and/or the time for completion of the Work shall be shown. The bar chart shall include a graph representing the monthly percent of Work to be completed. The bar chart shall be revised and submitted as required by the Engineer and/or when conditions affect construction schedule.

When required by the Engineer, the Contractor shall also deliver at the time the Construction Progress Schedule is delivered, in a form satisfactory to the Engineer, a Schedule of Values for Contract Payments for those lump sum items designated by the Engineer. Partial Payment Estimates based on the Schedule of Values shall be submitted monthly. All such schedules and estimates shall, as a minimum, follow the Divisions and Sections of the Contract. The Engineer may require submission of revised schedules demonstrating the manner in which the necessary rate of progress will be achieved, all without additional cost to the Owner. Partial Payment estimates may be appropriately reduced if the Engineer determines that the Contractor has failed to supply the Owner with the requested or necessary information.

When specified in the **SPECIAL PROVISIONS** in addition to the bar chart, the Contractor shall develop and submit to the Engineer for approval a time-scaled Critical Path Method (CPM) schedule and a numeric analysis. The critical path schedule and numeric analysis shall be revised to reflect any alteration in the position of events or of the critical path, and submitted with each request for partial payment. The critical path schedule and numeric analysis also shall be revised and submitted at such other times as the Engineer may require, or at any time the Contractor determines that the position of events of the critical path is altered by changes, or other circumstances. Numeric analysis as described in this paragraph also means "Network Analysis." The initial CPM schedule and numeric analysis shall be submitted to the Engineer no later than twenty-one (21) days from the effective date of the Notice to Proceed.

Events shall be numbered according to, or shall be separately keyed to those Specifications Divisions and Sections required for the Work. Each Division and Section of the Specifications and each item in the Schedule of Values shall be represented by one or more events. In addition, one or more events shall represent the submittal schedule, materials procurement, plant and equipment procurement and freighting, and all other significant elements of the Work. Weather and ground condition restraints, critical dates, holidays, periods of Work suspension and all other restraints shall be shown. All events, which are critical or will become critical to the schedule, shall be shown.

Article 5.4 Unusual Working Hours, Holidays, Saturdays, and Sundays

The Contractor shall give the Engineer forty-eight (48) hours advance notice of his intention to work overtime, Saturdays, nights, Sundays or holidays, or anytime outside the usual working hours. In no case shall the Contractor do any such Work without first notifying the Engineer to allow arrangements for proper inspection. Unless of an emergency nature, work performed in violation of this paragraph will not be paid for.

The Contractor shall reimburse the Owner all costs for inspection work performed on Sundays or recognized holidays except when this work is required by a permit issued by an agency after the contract has been executed.

Article 5.5 Shop Drawings

A. General

Wherever called for in the Contract Documents, or where required by the Engineer, the Contractor shall furnish to the Engineer for review, one (1) hard copy and a digital pdf copy of each Shop Drawing submittal. With reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate Contractor. The term "Shop Drawings" as used herein shall be understood to include detailed design calculations, drawings supplemental to the design drawings, fabrication and installation drawings, erection drawings, lists, graphs, catalog sheets, product data sheets, and similar items.

Where the Contractor is required to submit design calculations as part of a submittal such calculations (e.g., steel tank design calculations) shall bear the signature and seal of an Engineer registered in the appropriate branch and the state wherein the product is to be built, unless otherwise directed or approved.

B. Submittal Form

Contractor submittals shall be accompanied by the Contractor's Submittal Transmittal Form. Any submittal not accompanied by such a form, or where all applicable items on the form are not completed, will be returned for re-submittal.

The Deviation Request Form will be required with the submittal when the shipped product does not fully comply with all the requirements of the Contract Documents.

C. Submittal Package

A separate transmittal form shall be used for each item or class of material or equipment for which a submittal is required; however, transmittal of a submittal of various items using a single transmittal form will be permitted when the items taken together constitute a Manufacturer's "package," or are so functionally related that expediency indicates review of the group or package as a whole. Each class, or item submittal for review shall be listed separately on the transmittal form. A multiple-page submittal shall be collated into sets, and each set shall be stapled or bound, as appropriate, prior to transmittal to the Engineer.

The Shop Drawings submitted by the Contractor shall bear his specific written and signed certification that he has verified that the Work shown is in conformance with the contract documents; that he has determined and verified quantities, dimensions, field measurements, and related field construction criteria; and has checked and coordinated

the submittal with the requirements of the Work. The Contractor shall indicate on the Shop Drawing submittal any deviation from the requirements of the Contract Documents.

All Shop Drawings shall be clear and legible. Any Drawings submitted which appear to be carelessly prepared, erroneous, or unchecked will be returned to the Contractor for further action, and resubmittal.

D. Review Period

Except as may otherwise be indicated herein, the Engineer will return two (2) prints of each submittal to the Contractor with its comments noted thereon, within thirty (30) calendar days following their receipt by the Engineer. It is considered reasonable that the Contractor shall make a complete and acceptable submittal to the Engineer by the second submission of a submittal item. The Owner reserves the right to withhold monies due to the Contractor to cover additional costs of the Engineer's review beyond the second submittal of the same items. The Engineer's maximum review period for each submittal, including all resubmittals, will be thirty (30) working days per submittal.

E. Submittal Acceptance

If a submittal is returned to the Contractor marked "NO EXCEPTIONS TAKEN," formal revision and resubmission of said submittal will not be required.

F. Corrections Required

If a submittal is returned to the Contractor marked "MAKE CORRECTIONS NOTED," formal revision and resubmission of said submittal will not be required. "Corrections" noted for the submittal shall be made by the Contractor.

G. Resubmittal

If a submittal is returned to the Contractor marked "REVISE AND RESUBMIT," the Contractor shall revise said submittal and shall resubmit the required number of copies of said revised submittal to the Engineer. The Engineer shall state the reason for resubmittal requirements if applicable. Revisions on resubmittals other than those requested by the Engineer on previous submittals shall be specifically noted by the Contractor.

When Shop Drawings are required on a portion of the Work, the Contractor shall not commence that portion of Work or any item relying on said portion of Work until such Shop Drawings have been given written approval by the Engineer.

The Contractor shall keep one copy of all Contract Documents, including modifications, and one copy of approved Shop Drawings in good order and available to the Engineer or his representative at the construction site.

H. Submittal Rejected

If submittal is returned to the Contractor marked "REJECTED," the Contractor shall revise said submittal, prepare a new submittal, and shall resubmit the required number of copies of said revised submittal to the Engineer. The Engineer shall state the reasons for rejection.

I. Initiate Fabrication

Fabrication of an item shall commence only after the Engineer has reviewed the pertinent submittals and returned copies to the Contractor marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS AS NOTED." Corrections indicated on submittals shall be considered as changes necessary to meet the requirements of the Contract Documents and shall not be taken as the basis for changes to the Contract requirements.

J. Contractor to Review Submittal

All Contractor Shop Drawing submittals shall be carefully reviewed by an authorized representative of the Contractor, prior to submission to the Engineer. Each submittal shall be dated and signed, and the appropriate box on the transmittal form checked by the Contractor certifying that the submittal "meets all the requirements specified or shown, except for the following deviations (List Deviations)." In the case of Shop Drawings, each sheet shall be so dated, signed, and certified. No consideration for review by the Engineer of any Contractor submittals will be made for any items that have been so certified by the Contractor. All non-certified submittals will be returned to the Contractor without action taken by the Engineer, and any delays caused thereby shall be the total responsibility of the Contractor.

K. Contractor Responsibility

The Engineer's review of Contractor Shop Drawing submittals shall not relieve the Contractor of the entire responsibility for the correctness of details and dimensions and compliance with the Contract Documents. The Contractor shall assume all responsibility and risk for any misfits due to any errors in Contractor submittals. The Contractor shall be responsible for the dimensions and the design of adequate connections and details, and shall not rely on the Engineer to discover errors or omissions.

Article 5.6 Product Data

The Contractor shall submit for approval one (1) hard copy and a digital pdf copy of complete Product Data for those items for which submittals are required by the Contract Documents including, but not limited to, specific performance data, material description, rating, capacity, working pressure, material gage or thickness, brand name, catalog number, and operating and maintenance data. Submittals shall be submitted with reasonable promptness and in such sequence as to not cause a delay in the Work, in the Work of the Owner, or any separate Contractor. With reasonable promptness, the Engineer will review and approve or take other action on the submittals. Approval by the Engineer is required before any of the equipment is ordered.

Contractor submittals shall be accompanied by the Contractor's Submittal Transmittal Form. Any submittal not accompanied by such a form, or where all applicable items on the form are not completed, will be returned for re-submittal.

A Deviation Request Form will be required with the submittal when the shipped product does not fully comply with all the requirements of the Contract Documents.

Product Data for equipment approved by the Engineer shall not in any case supersede the Contract Documents. The approval by the Engineer shall not relieve the Contractor from responsibility to correct deviations from Drawings or Specifications, unless he has in writing called the Engineer's attention to such deviations at the time of submission and secured the Engineer's written approval, nor shall it relieve him from responsibility to correct errors of any sort in the items submitted. The Contractor shall check and approve the item described by the Product Data with the Contract Documents for deviations and errors prior to submittal to the Engineer for approval. It shall be the responsibility of the Contractor to ensure that items to be furnished fit the space available.

Upon approval of the equipment by the Engineer, the Contractor shall furnish four (4) copies of Product Data of all equipment or components together with operating and maintenance instructions.

Article 5.7 Materials

All materials and equipment furnished under the Contract shall be new unless otherwise specified, and shall be of good quality, free from defects, and shall conform to the requirements of the Contract Documents. Substitute materials shall not be used unless approved by the Engineer prior to installation. When required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

In order to establish standards of quality the Specifications may refer to certain products by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers. The words "approved equal" shall be considered following all such listings regardless of whether or not they so appear.

The Contractor shall furnish the Engineer the complete list of proposed substitutions within ten (10) calendar days of the effective date of the Notice-to-Proceed (or such time as may be approved by the Engineer), together with complete engineering and catalog data in sufficient time prior to their use to give the Engineer adequate time for review. Failure on the part of the Contractor to obtain the necessary approval prior to ordering or using such alternate material or equipment shall not relieve the Contractor of furnishing acceptable material or equipment as required by the Contract Documents.

A Substitution Request form shall accompany each material for which the Contractor request a substitution.

The Contractor shall abide by the Engineer's decision when proposed substitute materials or items of equipment are judged to be unacceptable and shall furnish the specified material or item of equipment in such case. The Engineer will approve or disapprove proposed substitutions in writing within a reasonable time. No substitute materials shall be used unless approved in writing.

Materials shall be stored in such a manner as to insure the preservation of their quality and fitness for use. When considered necessary to protect materials against cold, dampness, or to keep them clean and free from dust, dirt, or other detrimental matter, suitable sheds, platforms, and covers shall be provided. The Contractor shall provide easy access to stored materials for inspection whenever requested by the Engineer.

Manufactured articles, material, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the Manufacturer. In the event of conflict between the manufacturer's directions and the Contract Documents, the higher standard requirements shall govern.

Article 5.8 Testing of Materials

All tests shall be made in accordance with methods as described and designated in the Contract Documents. When tests of materials are required on site, such tests shall be provided by and at the expense of the Owner unless otherwise specified in the **SPECIAL PROVISIONS**. All factory testing, mill testing and other off-site testing shall be as specified or required to conform with codes and industry standards and provided by and at the expense of the Contractor.

The Contractor shall provide such labor and facilities as may be required for collecting and forwarding Samples necessary for testing and shall hold the materials represented by the Samples until tests have been made and the materials found equal to the requirements of the Specifications. The Contractor in all cases shall furnish the required Samples without charge.

In the absence of any definite Specification, it shall be understood that such materials and tests shall meet the Specifications and requirements of the American Society for Testing and Materials (ASTM) or the American Association of State Highway Transportation Officials (AASHTO).

Wherever a particular specification of a Society for Testing and Materials is referred to by number, it shall be understood that such reference shall include all amendments and additions thereto adopted by such organizations prior to the award of the Contract.

Repetitive testing of materials in constant use may be required periodically by the Engineer. Required retesting shall be accomplished at the expense of the Contractor when materials have previously been tested and have not met the requirements of the Contract Documents.

Article 5.9 Contractor's Authorized Representatives and Employees

The Contractor shall within five (5) days after the Notice to Proceed, name the Superintendent, the Safety Supervisor required by Article 6.8 and file with the Engineer a list of all persons who are authorized to sign documents on behalf of the Contractor to fully bind the firm.

The Superintendent shall be thoroughly qualified and experienced; shall be completely familiar with the requirements of the Contract Documents; shall direct all Work and shall be present at the jobsite or readily available at all times while Work is in progress.

The Superintendent shall be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the Superintendent shall be as binding as if given to the Contractor.

The Contractor shall employ only qualified journeymen, mechanics, tradesmen, and installers who are thoroughly skilled and experienced in their respective trades or specialties. When apprentices and helpers are employed, they shall be under the supervision of qualified journeymen mechanics and tradesmen at all times.

The Contractor shall at all times enforce strict discipline and good order among his employees and Subcontractors and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Engineer may require the Contractor to remove from the Work any employee or Subcontractor that the Engineer deems incompetent, careless, or otherwise objectionable.

Article 5.10 Subcontracting

If any part of the Work to be done under the Contract is subcontracted, the subcontracting shall be done in accordance with the following provisions:

All Subcontractors proposed for the Work shall be acceptable to the Owner.

Within ten (10) days after the effective date of the Notice-to-Proceed, and prior to commencement of the Work, the Contractor shall provide the Engineer in writing a list of Subcontractors together with a summary of the extent and character of the Work to be done by each Subcontractor. If for sufficient reason, at any time during the progress of the Work, the Engineer determines that any Subcontractor is incompetent or undesirable, he will notify the Contractor accordingly and immediate steps will be taken by the Contractor for cancellation of such subcontract. Subletting by Subcontractors shall be subject to the above.

The Contractor shall be fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the City.

The subcontracting of any of the Work to be done will in no way relieve the Contractor of any part of his obligations under the Contract.

Article 5.11 Right of the City to Do Work

It is expressly understood that the City has the right to do Work and may award other Contracts in connection with the Work under this Contract or nearby projects. The Contractor shall conduct his operations so as to interfere as little as possible with other contractors or subcontractor on or near the Work.

Article 5.12 Safeguarding of Excavations

The Contractor shall provide such safeguards and protections around and in the vicinity of all excavations as may be necessary to prevent damage to property or injury to persons.

The Contractor shall backfill all trench excavations to the top of the trench at the end of each working day, except, at Contractor's option, a "bell-hole" may be left open if properly barricaded and adequate signing and warning lights are placed to prevent inadvertent entry by vehicular or pedestrian traffic. If ground water or surface water results in standing water in the remaining excavation, continuous pumping shall be provided to maintain the excavation in a dewatered condition. All roadways shall be left in a drivable condition for normal vehicular and transport operations at the end of each day's operation.

These requirements shall in no way relieve the Contractor of the obligation to restore private property to its preconstruction condition.

Article 5.13 Use of Explosives

In the handling and storage of explosives, the Contractor must comply with all Federal, State and local laws, and shall use every precaution to prevent injury to persons and damage to property. Secured storage places shall be provided and identified with warning signs. Only persons licensed and experienced in the handling of explosives shall be allowed to use them and no explosive shall be detonated until warning has been sounded and all persons removed from within the radius of danger. Proof of license must be provided to the Engineer prior to handling and use of explosives.

Article 5.14 Duties of Inspectors

Inspectors will be authorized to inspect all Work and Materials. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. Inspectors will not be authorized to alter or waive the provisions of the Contract. Inspectors will not be authorized to issue instructions contrary to the Contract Documents or to act as foreman for the Contractor.

Inspectors will immediately inform the Contractor of any deficiency known to exist in the Work and any laboratory test results.

The Contractor's responsibility for Work performed under the Contract shall in no way be relieved because of the presence or absence of an inspector. Work shall not be considered acceptable because of the presence of an inspector.

Article 5.15 Inspection

The Engineer or his representative shall be allowed access to all parts of the Work at all times and shall be furnished with every reasonable facility for ascertaining whether or not the Work is in accordance with the requirements and intent of the Contract Documents. Upon the request of the Engineer, the Contractor shall, at any time before Final Acceptance of the Work, remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the Contract Documents. Should the Work thus exposed or examined prove acceptable, the uncovering or removing, the replacing of the coverage or the restoration of the parts removed shall be paid for as extra work.

Should the Work so exposed or examined prove unacceptable, the uncovering or removing, replacing of the covering and the restoration of the parts removed, shall be at the Contractor's expense.

Article 5.16 Work Limits, Easements, and Rights-of-Way

The Owner will provide work limits, rights-of-way and easements for the Work. Information regarding the width and status of easements is shown on the Drawings. The Contractor shall comply with all Special Conditions, provisions, stipulations, and restrictions thereof. The Contractor shall confine his operations to the designated work areas, rights-of-way and easements and shall observe all restrictions. Prior to the start of construction of this project, the Contractor will ensure that all permits necessary for the construction of the project, including right of entry for driveway reconstruction, have been obtained and will ensure that they are available on the job site at all times.

The Contractor will be responsible for any trespass upon adjacent property or injury thereto resulting from or in connection with his operations. The Contractor shall be liable for any claims that may be made on account of trespass and shall provide a written statement from the property owner of full restoration or satisfactory resolution prior to Final Acceptance of the Work. The Contractor shall not have the right to remove materials from a right-of-way, easement, or work area unless otherwise provided in the Contract Documents.

Should the Contractor desire to go outside designated work areas, rights-of-way or easements, he shall provide the Engineer with written permission from the property owner before entering such property. The written permission shall specifically provide that the property owner will not hold the City, its employees, agents or consultants liable for use of or damage to this property.

Article 5.17 Responsibility for Damages

The Contractor shall be responsible for all damages to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by or that may result from any act, omission, or neglect of the Contractor, his Subcontractors, or his employees in the performance of the Work.

It is specifically understood between the parties executing the Contract that the Contract Documents do not make anyone a third party beneficiary, nor does the Contract authorize anyone not a party to maintain a lawsuit for personal injuries or property damage.

Article 5.18 Repair of Damages Caused by Contractor

All damage and injury to property that is caused by or that results from the carrying out of the Work, or from any act, omission, or neglect of the Contractor, his Subcontractors, or his employees, shall promptly be remedied by the Contractor either by the repairing, rebuilding, or replacing of the property damaged or in some other manner satisfactory to the owner of such property. In case of failure on the part of the Contractor to promptly and satisfactorily remedy such damage or injury, the City may proceed to repair, rebuild, or replace such property as required and the cost thereof will be deducted from any monies due or which may become due the Contractor.

In applying the above provisions, the repairing, rebuilding, or replacing of damaged property shall be understood to include the providing of any temporary facilities that may be needed to maintain normal service until the required repairing, rebuilding, or replacing is accomplished.

This provision also applies to all areas used by the Contractor for staging of the construction and shall include restoring those properties to their original condition to the satisfaction of the Engineer.

Article 5.19 Unauthorized and Defective Work

Any unauthorized or defective Work found to exist during construction shall be immediately remedied by the Contractor. If the Contractor fails to correct unauthorized or defective Work, the Owner may, three (3) days after a written notice to the Contractor, correct such deficiencies and deduct the cost thereof from any payment due the Contractor without prejudice to any other remedy including the use of Article 5.28, Termination of Contract by Owner.

Article 5.20 Changes in the Work

The Engineer shall have the authority to order changes in the Work requiring an adjustment in the Contract amount and/or time. Such changes in the Work shall be performed in accordance with any supplemental Drawings and instructions as the Engineer may issue. Any single change in the Work, or cumulative changes in the Work,

which will cause the total value of the Contract to change in excess of \$20,000 requires Council approval.

The Owner will pay for additions to the Work or take credit for reductions to the Work, at the Contract unit or lump sum prices, at negotiated unit or lump sum prices, or on a Time and Material basis as described under Article 7.3 - Payment for Time and Material. In the case of a negotiated price for either an addition or deletion, the Contractor shall furnish a price breakdown with his proposal which is itemized as required by the Engineer. The breakdown shall be in sufficient detail to permit an analysis of all materials, labor, equipment, subcontracts, insurance, bonds, overhead costs and profit and shall cover all Work involved to accomplish the modification whether deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification thereof shall also be furnished. The proposal together with the price breakdown and time extension justification shall be furnished by such date as may be specified by the Engineer.

The Engineer shall have authority to order changes in the Work which in his opinion do not require an adjustment in the Contract amount or an extension of time and are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

If the Contractor claims that such written instructions or orders involve extra costs or an extension of time, he shall make his claim by following the procedures set forth in Article 5.21 - Claims for Additional Compensation. The Contractor shall proceed with the Work as directed by the Engineer while his claim is being evaluated and shall not delay the Work while waiting for a decision.

All Contractor-initiated requests for deviation from the requirements of the Contract documents shall be accomplished by a completed Deviation Request form of acceptable format and content, clearly providing a summary of the contract requirements; the reason for the requested deviation; a description of the deviation and whether additional time or other compensation is requested or credit offered to the Owner. Unless agreed at the time of the Engineer's acceptance of the Deviation Request form, and formalized by an executed Change Order, any and all increased costs or delays resulting directly or indirectly from an unapproved deviation will be borne solely by the Contractor.

Any compensation paid in conjunction with the terms of a Change Order shall constitute total compensation due the Contractor for the Work or alteration defined in the Change Order. By signing the Change Order, the Contractor acknowledges that the stipulated compensation includes payment for the Work or alteration plus all payment for the interruption of schedules, extended overhead, delay or any other impact claim or consequential effects and, by such signing, specifically waives any reservation or claim for additional compensation in respect to the subject of the Change Order.

Article 5.21 Claims for Additional Compensation

Except as elsewhere restricted, the Contractor may make a claim for additional compensation when he or she believes that he or she has incurred additional costs due to the acts, errors, or omissions of the Owner. If the Contractor becomes aware of any act or occurrence which may form the basis of a claim, the Contractor shall make every effort to mitigate the extent of any amounts claimed for additional compensation and shall immediately inform the Engineer in writing of the potential for the claim, providing sufficient information to outline the basis of the claim. If the matter is not resolved within seven (7) days, the Contractor shall, within the next fourteen (14) days, submit written notice of the facts which may form the basis of the claim.

Thereafter, the Contractor shall submit the claim in writing to the Engineer within sixty (60) days of the submission of the written notice of the facts unless the Engineer agrees in writing to an extension of time for good cause shown. The Engineer may grant up to a sixty (60) day extension only upon the written request of the Contractor in which all reasons for the request are stated. The Contractor agrees that unless these written notices are provided, the Contractor will have no entitlement to compensation for the acts, errors, or omissions of the Owner, the Engineer or any other Contractor employed by the Owner. The Contractor shall in all cases continue performance of the Contract.

The written claim presented by the Contractor shall be complete and adequately stated on its face. It shall specifically include the facts and circumstances surrounding the claim and the Contract provisions under which the claim is made; the Contractor's assertion as to the original requirements of the Contract Documents and the basis for that assertion or position, citing all pertinent Specifications, Details, Plan notes or other Contract provisions; a clear certification that the Contractor's Bid Costs were in fact based on the stated original interpretation; the Contractor's assertion as to the revised requirements of the Contract Documents, citing all pertinent Contract provisions, or lack thereof, and other records on which that assertion or position is based; a narrative description of the increase in the Scope-of-Work resulting from the revision in the requirements; the Pay Items and quantities affected by the alleged change; references to previous notices of pending claim; and the specific relief requested, including both time extension and additional cost compensation and the basis on which both were calculated. In the case of cost compensation, such basis for specific relief shall include the labor classifications, rates and additional time; the equipment descriptions, rates and additional time; material descriptions, unit prices and quantities; and appropriate supporting documentation as to materials, unit prices, labor rates and equipment rates. The permitted rates and allowances shall be as provided under C.V.S.S. Section 10.07, Article 7.3 – Payment for Time and Material, as revised by the **SPECIAL PROVISIONS**.

Claims presented that do not include the above information or otherwise considered to be not complete on their face will be returned to the Contractor without review by the Engineer. The Engineer will render a decision as to the merit of a properly presented claim within sixty (60) days of its receipt. Any change in the Contract amount resulting

from such claim will be subject to approval by the Owner through the execution of a Change Order.

Article 5.22 Time for Completion of Work

The Owner shall indicate in the **AGREEMENT** either a time period for completion of the Work or a completion date. Time is of the essence in the Contract. Therefore, the Work to be performed under the Contract shall be completed in its entirety within the time period specified or before the completion date.

The Contractor shall furnish such manpower, materials, facilities, and equipment and shall work the required hours, including night shifts, overtime operations, and Saturdays, Sundays, and holidays as may be necessary to insure the completion of the Work within the time specified. If it becomes apparent that the Work will not be substantially completed or completed within the times specified, the Contractor shall, in order to complete on time, either increase manpower, increase the number of working hours, increase equipment, expedite delivery of material, or reschedule activities within the Contract time, and there shall be no additional costs to the Owner for such actions.

Failure of the Contractor to comply with the requirements of this Article may be considered grounds for termination under the Provisions of Article 5.28 - Termination of Contractor by Owner.

Article 5.23 Delays and Extension of Time

If the Contractor is delayed, beyond his/her control and without fault or negligence on his/her part, at any time in the progress of the Work by any act or neglect of the Owner or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavailability of materials for which orders were placed timely, or by unavoidable casualties, then the time period for completion or the completion date may be extended by Change Order, for such reasonable time as the Engineer may determine, without invalidating any of the provisions of the Contract and without the consent of the Surety.

Any claim for extension of time shall be made in accordance with the procedures set forth in Article 5.21 - Claims for Additional Compensation. In the case of a continuing delay, only one claim is necessary. The Contractor shall provide an estimate of the probable impact of such delay on the progress of the Work.

The above paragraph shall not apply to the supply of insulation. The timely delivery of insulation is considered a schedule-critical item and the Contractor shall include in his bid price the cost (if any) of expedited insulation delivery to assure that construction can be completed within the time of completion specified in Section 70.12. No extension of time or changes to bid unit prices will be granted to expedite the delivery of insulation.

Article 5.24 Suspension of Work

By executing a contract, the Contractor agrees that the Owner has the undisputed right to suspend the Work and that this right is a material condition of the contract. The Contractor shall immediately suspend the Work as directed in the written order. Failure of the Contractor to immediately suspend the Work as directed shall constitute a material and immediate breach of the contract by the Contractor. **The Owner may terminate this contract for default without providing the ten (10) day notice specified in Article 5.28, Termination of Contract by Owner, should the Contractor fail, refuse or otherwise not immediately suspend the Work as directed.**

The Work may be suspended in whole or in part by order of the Engineer for the convenience of the Owner. The Contractor shall take every precaution to prevent any damage or unreasonable deterioration of the Work during the time it is suspended. Suspension of the Work by the Engineer for the convenience of the Owner may furnish grounds for a claim by the Contractor for additional compensation and/or a time extension, in which case the Contractor, when making a claim, shall comply with the provisions of Article 5.21 - Claims for Additional Compensation.

Upon the failure of the Contractor to carry out the orders of the Engineer or to perform in accordance with the Contract Documents, the Engineer may suspend the Work for such period as may be necessary. Time lost by reason of such suspension, or replacement of improper work or material, shall not furnish any grounds to the Contractor for claiming additional compensation and/or an extension of time and shall not release the Contractor from any liability for damages or for failure to complete the Work within the time prescribed.

Unless otherwise specified in these **SPECIAL PROVISIONS**, the Engineer may suspend the Work when adverse winter weather conditions make it impractical to secure the desired results. When the Work is suspended for adverse winter weather conditions, the Contractor shall not be entitled to additional compensation. The Contractor shall be responsible for all maintenance costs during the winter suspension period, unless all provisions of this section are fulfilled. If the Engineer determines all required conditions are met, the Owner will perform the routine winter maintenance operations specified below during the winter suspension period. During the winter suspension period, routine winter maintenance shall include and be restricted to the following:

1. Maintaining the traveled way and/or detour surface.
2. Maintaining drainage facilities except final cleaning of storm drains.
3. Maintaining access to abutting properties.

The Owner shall assume no other responsibilities and will not accept maintenance responsibilities for incomplete Work adjacent to accepted roads.

If in the opinion of the Engineer, the Contractor has completed all of the following requirements, then the Owner shall assume winter maintenance responsibilities as outlined above.

The Contractor shall stage all operations to assure the Work is sequenced in a manner such that suitable maintenance conditions are established prior to the winter suspension period. Suitable maintenance conditions shall be determined by the Engineer and include, but may not be limited to, a safe, smooth, and unobstructed travel way through the construction area (at or near the final grade of the proposed Work), well-established and functional drainage facilities, and proper access to abutting properties and display the following characteristics prior to winter suspension:

1. Areas that are to be paved in their final condition as a part of the contract shall be paved.
2. Drainage ways that are to be paved with curb and gutter, valley gutter, paved shoulders or paved swales in their final condition as a part of the contract shall be paved. For temporary drainage facilities to be deemed suitable, all collection points included in the project design shall be functional.
3. Illumination, traffic signals, and signing shall be in proper working order.
4. All existing roads affected by the Work shall be returned to full operation.

The Contractor shall meet with the Engineer within the week prior to September 15th to outline the Work to be completed before winter suspension. At the meeting, the Contractor shall provide a written plan describing the Work to be completed prior to the winter suspension period, including an updated progress schedule, clear definitions of the Work underway and the proposed condition of each element of the Work at the time of the anticipated winter suspension.

Prior to winter suspension, the Contractor shall, at his own expense, do all Work necessary to establish suitable maintenance conditions. The Contractor shall then schedule a field review for acceptance by the Engineer for winter maintenance. Within two days following the field review, the Engineer will prepare a punch list of deficiencies to be corrected prior to acceptance for winter maintenance. In order for the Contractor to be relieved of the responsibility for the costs of winter maintenance, all items on the punch list shall be corrected to the satisfaction of the Engineer by October 10th. At all times, the Contractor shall continue to Work in a manner which will not result in unsuitable conditions for winter maintenance.

If, after September 20th, the Contractor has not presented a written winter suspension plan, or at any time in the opinion of the Engineer, the Contractor does not appear to be preparing the Work for winter suspension in a reasonable manner, or if the Contractor fails to correct punch list items for winter suspension, the Engineer may:

1. Direct the Contractor to complete the Work required to prepare for winter suspension at the Contractor's expense;
2. Direct the Contractor to complete all winter maintenance that may be necessary in deficient areas at the Contractor's expense;
3. Complete the Work required to prepare for winter suspension with the forces of the Owner or a separate Contractor at the Contractor's expense;
or
4. Complete any or all winter maintenance with the forces of the Owner or a separate Contractor at the Contractor's expense.

Any costs incurred by the Owner due to the Contractor's failure to prepare the Work for winter suspension shall be borne by the Contractor.

All existing roads affected by this project are to remain in full and safe operation for the benefit of the traveling public throughout the winter suspension period.

During the period of suspension, the Contractor shall continue to be responsible for the protection of the Work and shall repair all damage at his expense except where the damage is caused by City maintenance forces. When the Work is resumed, the Contractor agrees to accept the traveled way and drainage system as it has been maintained by the City and no claim shall be made because of its condition or the manner in which the maintenance was performed by the City.

Where the Contract provides for a time period for completion and the Work is suspended for the convenience of the Owner or for adverse winter weather conditions and the Contractor has prosecuted the Work with due diligence, the time period and liquidated damages provision of the Contract shall be suspended until Notice to Resume Work is issued by the Engineer.

Where the Work is suspended for adverse winter weather conditions, the Contractor shall not be entitled to additional compensation.

Article 5.25 Final Trimming of Work

The Contractor shall be responsible for all repair to the Work as necessary to overcome deterioration or damage that may occur prior to final inspection. The Contractor at all times shall keep the premises free from accumulation of waste materials, rubbish and debris. The Contractor shall grade all existing driveways on, and which have been affected by the project within the rights-of-way or easements as directed by the Engineer.

At the completion of the Work, all waste materials, rubbish, debris and temporary structures from and about the Project as well as all his tools, construction equipment, machinery and surplus materials shall have been removed from the Project area. The Work shall be in a neatly trimmed and well-finished condition throughout at the time of Final Inspection. This Work shall be considered incidental to the contract unless there is a specific contract item for this Work.

At any time during the progress of construction that cleanup is not keeping pace with the rest of the Work in the opinion of the Engineer, the Contractor shall at the direction of the Engineer suspend all operations on the major items of work until the premises are cleaned up to the satisfaction of the Owner. Any additional expense involved will be the sole responsibility of the Contractor and the Owner will not be held liable for this additional expense.

All street name signs, traffic control signs, mailboxes, newspaper boxes, property corner markers, survey markers, survey monuments, and utility markers removed to facilitate or damaged by the Contractor's operations shall be restored by the Contractor unless otherwise directed. Items damaged by the Contractor during removal, storage, or restoration shall be repaired or replaced in kind by the Contractor. Repairing or replacing damaged items shall be considered incidental to the Contract and no separate payment shall be made.

Article 5.26 Final Inspection

When the Contractor, by his own comprehensive inspection, has concluded that all Work is completed, all code compliance inspections are performed and all other contract requirements are fulfilled, he shall notify the Engineer in writing of completion and request a pre-final inspection of the Project. This inspection will be performed in the presence of a representative of the Owner, the Engineer, and the Contractor. The Contractor will make available copies of all required code compliance inspection reports at this inspection. All deficiencies indicated by this inspection will be listed and promptly furnished to the Contractor for remedial action. When all listed deficiencies have been corrected, the Contractor shall notify the Engineer and a Final Inspection will be performed. When the Final Inspection verifies correction of the listed deficiencies, the Engineer will issue a Certificate of Completion.

When the Final Inspection reveals uncorrected listed deficiencies, the above outlined procedure shall be repeated and the cost of reinspection will be deducted from any money due the Contractor. This cost will include, but is not limited to, salaries, administrative, and transportation costs.

Article 5.27 Liquidated Damages

For each calendar day that the Substantial Completion and/or Final Acceptance date is delayed beyond the Contract Completion Date, the sum per day listed in the **AGREEMENT** shall be deducted from any monies due the Contractor. After Substantial Completion, the Owner shall deduct from any monies due the Contractor the sum per day

listed in the Special Provisions for every calendar day that the Final Acceptance date is delayed beyond the Contract Completion Date. If no money is due the Contractor, the Owner shall have the right to recover said sums from the Contractor, the Surety or both.

The Contractor acknowledges that the daily amount of the Liquidated Damages provision is not a penalty but rather is a reimbursement for damages that the Owner will sustain by reason of delayed completion. The Contractor further acknowledges that the daily amount of Liquidated Damages is a reasonable alternative to the complex calculations that would otherwise be necessary to determine such damages.

Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the Owner of any of its rights under the Contract.

Article 5.28 Termination of Contract by Owner

If the Contractor should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper materials for the efficient prosecution of the Work, or persistently disregard laws, ordinances, or the instructions of the Engineer, or otherwise substantially violate any provisions of the Contract, then the Owner, may without prejudice to any other right or remedy and after giving the Contractor and his Surety ten (10) days concurrent written notice, terminate the Contract and take possession of the premises and of all materials, tools and appliances thereon. Notwithstanding the preceding, the Owner may immediately terminate this contract for default without providing a ten (10) day notice if the Contractor fails, refuses or otherwise does not comply with a written order by the Engineer that may involve issues of safety or a suspension of work issued under Article 5.24. When the Contractor and Surety are notified of the termination of the Contract, the Owner may demand that the Surety fulfill its obligations under the Performance and Payment Bond. Should the Surety fail to perform its obligations under the Bond upon demand of the Owner, then the Owner may finish the Work by whatever method that the Owner determines expedient. The Contractor and his surety shall be responsible for compensating the owner for all excess costs, including applicable liquidated damages and all reprourement costs, incurred in accomplishment of the Contract Work.

In the event that the Owner terminates the Contract, the Owner does not waive any other right or remedy under the Contract or any other right or remedy available at law or equity. The Contractor may not be allowed to bid on any Owner's contracts for a period of two years following the date of this termination by the Owner.

In the case of termination before completion for any cause whatsoever, the Contractor, if notified to do so by the Owner, shall promptly remove equipment and supplies from the premises of the Owner. Failure to do so will authorize the Owner to remove such equipment and supplies from the premises at the expense of the Contractor.

Article 5.29 Termination of Work for City's Convenience

At any time during the term of this contract, the Owner may terminate the Work, in whole or in part, for any reason that the Engineer shall determine to be in the best interest of the Owner. Any such termination shall be effected by delivery of a Notice of Termination to the Contractor, specifying that the termination is for the convenience of the Owner; the extent to which performance of the Work under the Contract is terminated; and the date upon which such termination becomes effective.

After receipt of a Notice of Termination and except as otherwise directed by the Owner, the Contractor shall:

1. Stop work under the contract on the date and to the extent specified in the Notice of Termination;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work under the contract as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the contract;
5. Submit to the Engineer a list, certified as to quantity and quality, of any or all items of termination inventory exclusive of items the disposition of which had been directed or authorized by the Engineer;
6. Transfer to the Engineer the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Owner;
7. Take such action as may be necessary, or as the Engineer may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which the Owner has or may acquire any interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable cost under this clause.

When the Owner orders termination of Work, effective on a certain date, all completed units of Work within each pay item as of that date will be paid for at the contract unit bid price. Payment for materials included in the material inventory described in #5 above will

be paid at actual cost delivered to the project or storage site, including transportation charges. Allowable total markup on the actual cost shall be fifteen percent (15%).

After receipt of a Notice of Termination, the Contractor shall submit to the Engineer his claim for alleged additional damages or costs not covered above or elsewhere in these specifications as provided in Section 10.05, Article 5.21. In no event, however, will loss of anticipated profits be considered as part of any settlement.

Article 5.30 Use of Completed or Uncompleted Portions

The Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, prior to the date specified for completion, and such action and use shall not be considered an acceptance of that Work. If such use by the Owner causes additional expense to the Contractor and/or delay in the Work, the Contractor may be entitled to additional compensation and/or an extension of time. Claims for additional compensation or a time extension shall follow the procedures set forth in Article 5.21 - Claims for Additional Compensation. The Owner shall be responsible for routine maintenance or damages caused by its use of such portions of the Work.

Article 5.31 Pre-Construction Conference

Within five days after delivery of the executed agreement by the Owner to Contractor, but before starting the Work at the site, a Pre-Construction Conference will be held to review the Contractor's schedules and Plans, to establish procedures for handling shop drawings and other submissions, for submitting and processing applications for payment, and to establish a working understanding between the parties as to the project. Present at the conference will be the Owner or his Representative, Engineer, Inspector, Contractor, and his Superintendent and Subcontractors.

SECTION 10.06 LEGAL RELATIONS AND RESPONSIBILITIES

Article 6.1 Laws to be Observed

The Contract shall be governed by the laws of the State of Alaska. The Contractor at all times shall observe and comply with all Federal, State and local laws, ordinances, and regulations in any manner affecting the conduct of the Work and all such orders or decrees existing or which may be enacted or promulgated by legislative bodies, boards, tribunals or Courts having any jurisdiction or authority over the Work. The Contractor shall defend, indemnify, and hold harmless the City and the officers, employees, and agents of the Owner, including the Engineer, against any claim or liability arising from or based on the violation of any such laws, ordinances, regulations, orders, or decrees, whether such violations be by the Contractor, his Subcontractor, or his employees.

Protection of Water Resources. The Contractor shall control the disposal of fuels, oils, bitumens, calcium chloride, acid or harmful materials, both on and off the premises, and shall comply with applicable federal, state, and City laws concerning pollution of waterways while performing Work under this Contract. Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, trash, sediment, and sewage from entering established drainages. In addition, the Contractor shall ensure that all discharges from dewatering activities are free of mild, dirt, silt, sand or clay before entering and numerous water courses.

Waste Disposal. Prior to construction, the Contractor shall submit a description of his scheme for disposing of unsuitable materials and waste resulting from the Work under this Contract. If any material is dumped in unauthorized areas, the Contractor shall remove the material and restore the area to the condition of the adjacent undisturbed areas.

Dust and Mud Control.

- a. The Contractor shall maintain all excavations, embankments, stockpiles, access roads, waste areas, borrow areas, and all other work areas free from excess dust and mud to such reasonable degree as to avoid causing a hazard or nuisance to others.
- b. The Contractor shall keep all existing paved areas and roadways, especially heavily traveled roads, adjacent to the project construction site or used as haul roads clean of dirt, mud, trash, sediment, and debris resulting from his operation during the construction period.

Article 6.2 Notice to Contractors

Any written notice to the Contractor by the Owner shall be served on said Contractor or his representative either personally or by mailing to the address given in the Contract. Electronic facsimile transmissions (fax) will not be used to serve notice to the Contractor.

Electronic facsimile transmissions may be used to informally notify the Contractor of impending official notification.

Article 6.3 Notice by Contractors

Any notice to the Owner by the Contractor shall be made in writing delivered to the Engineer or his representative in person or mailed to the office of the Engineer at the address given in the official Notice to Proceed.

Electronic facsimile transmissions (fax) will not be used to serve notice to the Engineer. Electronic facsimile transmissions may be used to informally notify the Engineer of impending official notification. The official notification will not be considered delivered until delivered in person or by mail to the Engineer.

Article 6.4 Successors and Assigns

The Contractor binds himself, his partners, successors, assigns, and legal representatives to the Owner with respect to all covenants, conditions, and obligations contained in the Contract Documents.

Article 6.5 Assignments

The Contractor shall not assign the whole or any part of the Contract or any monies due or to become due the Contractor without written consent of the Owner. If the Contractor assigns all or any part of any monies due or to become due him, the instrument of assignment shall state that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms, and corporations who performed Work or supplied materials under the Contract.

Article 6.6 Permits

All permits or licenses not required to be obtained by the Owner, but which are required by any federal, state or local governmental agency or any public utility shall be obtained and paid for by the Contractor when such permits or licenses are necessary for the prosecution of the Work. The Contractor shall be responsible for all stipulations of these permits and shall be responsible for all costs associated with these permits and their stipulations.

It will be the Contractor's responsibility to give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as specified herein. The Contractor shall also be responsible for requesting all code compliance inspections.

The Owner will obtain the required permits and authorizations for Work within the State of Alaska ADOT rights-of-way and permits from the U.S. Corps of Engineers, U.S. Fish and Wildlife Service, and State Department of Fish and Game. Prior to the start of construction within the scope of such permits, the Contractor shall obtain the necessary approvals and permits relating to the method, plan and exact schedule of construction for

any Work within such rights-of-way, creeks and wetlands. Failure on the part of the Contractor to comply with any of the stipulations of any of the applicable Owner- or Contractor-acquired permits shall be sufficient cause for the Owner to suspend that Work.

The Contractor shall also be responsible for requesting all code compliance inspections. The Contractor shall obtain any necessary City Building Permits which will be issued at no charge by the City.

Article 6.7 Copyrights and Patents

The Contractor shall defend, indemnify and hold harmless the City, its officers, employees, and agents of the Owner, including the Engineer from any and all claims, suits, or actions brought for the infringement of any copyright or patent claimed to be infringed by any material, devices, drawings, method, or process to be incorporated in the Work and/or required to be used in connection with the Work, including all attorney's fees and costs.

Article 6.8 Safety

The Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons (including employees, owner's representatives, and the public) and property during performance of the Work. This requirement shall apply continuously twenty-four (24) hours per day, seven (7) days per week and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), the State Occupational Safety and Health Act, and all other applicable Federal, State, County, and local laws, ordinances, codes, the requirements set forth below, and any regulations that may be detailed on other parts of the Contract Documents. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth herein.

The Contractor shall develop and maintain for the duration of this Contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program and shall notify the Engineer of the name and contact phone number for this person prior to commencement of the Work.

The duty of the Engineer to conduct construction review of the Work does not include review or approval of the adequacy of the Contractor's safety supervisor, the safety program, or any safety measures taken in, on, or near the construction site.

If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Engineer and the Owner. In addition, the Contractor must promptly report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the Work whether on, or adjacent to, the site, giving full details and statements of witnesses.

If a claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

Failure to comply with the Occupational Safety and Health rules and regulations, notwithstanding any other provision of the Contract, is sufficient cause for termination under the provisions of the Contract.

Article 6.9 Insurance

Before signing the Contract or commencing the Work or allowing any Subcontractor to commence Work, the Contractor shall obtain all insurance required under this Article. The Contractor shall maintain this insurance until the Final Acceptance Date. The Contractor shall file with the Engineer as verification of insurance a certificate of insurance on the forms furnished, showing the type and amounts of insurance, the policy number, expiration date and signed by an authorized representative of the insurance company. Each certificate of insurance will state that the policy or policies have been endorsed whereby the insurance company will provide not less than thirty (30) days written notice to the Engineer of any material change, cancellation, or non-renewal of the insurance policies. All insurance policies required under this Article shall name the City as an additional insured for the purposes of the Project and shall contain a waiver of subrogation against the City.

The Contractor shall provide the following types of insurance:

Workers' Compensation

Minimum Limits

\$500,000 Employers Liability and Workers' Compensation as required by Alaska State Workers' Compensation Statutes.

Statutory

Commercial General Liability

Minimum Limits

Bodily Injury and Property Damage Liability
Premises Operations including explosion, collapse and underground;
Products and Complete Operations;
Broad Form Property Damage;
Blanket Contractual;
Personal Injury
Owner's/Contractor's Protection

\$1,000,000 Combined
Limit Each Occurrence
and \$2,000,000
Aggregate

Commercial Automobile Liability

Minimum Limits

Bodily Injury and Property Damage,
including all owned, hired and non-owned
automobiles

\$1,000,000 Combined
Limit per Accident

When specified in the **SPECIAL PROVISIONS** the Contractor shall provide the following additional coverages:

	<u>Minimum Limits</u>
Federal Longshoremen and Harbor Workers Compensation Act and the Federal Maritime Liability Law (Jones Act)	Statutory
Builder's Risk	\$1,000,000 Total Contract Amount

NOTICE TO "OUT OF STATE" CONTRACTORS

A Certificate of Insurance for Alaska Worker's Compensation, or an "other states" endorsement on your home state Worker's Compensation policy, is required prior to execution of a Contract or commencement of any contract performance, if any in-state visits or Work is required or anticipated.

Article 6.10 Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City and the Engineer and their agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death or personal injury, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the City or the Engineer or their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker's Compensation acts, disability benefit acts, or other employee benefit acts.

Article 6.11 Claims by Workmen, Suppliers, and Subcontractors

In the event the Contractor or any Subcontractor fails, neglects, or refuses to make prompt and full payment for labor, services, materials, supplies, or provisions furnished by any person in connection with the Work, then the Owner may withhold the amount due from the Contractor's progress payments provided that an affidavit of claim on the form furnished is filed with the Engineer. The withholding by the Owner does not relieve the Contractor or his Surety from their obligations with respect to the payment of such claims.

Sums withheld from progress payments will be disbursed pursuant to Article 7.6 - Payment of Claimants.

Article 6.12 Certified Payroll

The Contractor shall file with the Alaska Department of Labor, Wage and Hour Administration, Labor Standards and Safety Division, a certified payroll on Friday of each week that covers the preceding week. Each contractor and subcontractor shall furnish to the City of Valdez project manager a copy of the certified payroll they have supplied the Alaska Department of Labor for each week in which any Contract Work is performed.

The prime contractor is responsible for the subcontractors submission of certified payrolls to the Alaska Department of Labor with a copy submitted to the City of Valdez project manager.

Article 6.13 Lawsuits

If a lawsuit is filed by the Contractor or his Surety against the City or by the City against the Contractor or his Surety, the suit shall be commenced in the Third Judicial District in Valdez, Alaska.

If one of the questions at issue is the satisfactory performance of the Work by the Contractor, and should the appropriate Court decide that the Work of the Contractor was unsatisfactory, then the Contractor or his Surety shall reimburse the Owner for all legal and all other expenses incurred by the Owner because of the lawsuit as may be allowed and set by the Court. Further, it is agreed that the Owner may deduct such costs from any sum or sums then due or that may become due the Contractor under the Contract.

If any clause or condition of the Contract is held as a matter of law to be unenforceable or unconscionable, the remainder of the Contract shall be enforceable without such clause.

Article 6.14 Preference to Local Labor

The Contractor or any Subcontractor shall, in carrying out the Work, employ to the maximum extent practical and allowed by law, qualified persons who regularly reside in the City of Valdez.

Article 6.15 State of Alaska Prevailing Wage Scale

The Contractor shall comply with the Provisions of Title 36 of the Alaska Statutes for the payment of prevailing wages to their employees.

If the contract contains State of Alaska wage rates and a Federal Wage Decision, the Contractor and all Subcontractors shall comply with both wage decisions. The Contractor and all Subcontractors shall be responsible for paying the higher pay rate between the wage/rate decision. Additionally, the Contractor and all Subcontractors shall be responsible for providing certified payrolls to both the Engineer and the State of Alaska,

Department of Labor, Wage and Hour Division on a weekly basis utilizing the appropriate agency's form(s).

Article 6.16 Nondiscrimination

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, marital status, or who is a "qualified individual with a disability" (as that phrase is defined in the Americans with Disabilities Act of 1990). The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age, sex, marital status, or mental or physical impairment/disability. Such action shall include without limitation: employment, upgrading, demotion, or transfer, recruitment or recruiting advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The Contractor shall state in all solicitations or advertisements for employees for the Work that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex or marital status or mental or physical impairment/disability age.

The Contractor shall comply with any and all reporting requirements that may apply to it which the Anchorage Office of Equal Employment Opportunity Contract Compliance may establish by regulation.

The Contractor shall include the provisions of the first two paragraphs of this section in every subcontract or purchase order under this contract, so as to be binding upon every such Subcontractor or vendor of the Contractor under this contract.

Article 6.17 Rights and Remedies

The duties and obligations of the Contractor imposed by the Contract Documents and the rights and remedies of the Owner available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

The failure of the Owner or the Engineer to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Contract, or to exercise any right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of such provision or right(s) or of the right to subsequently demand such strict performance or exercise such right(s), and the rights shall continue unchanged and remain in full force and effect.

Article 6.18 Payment of Taxes

As a condition of performance of this contract, the Contractor shall pay all City taxes incurred by the Contractor. Satisfactory performance of this paragraph is a condition precedent to payment by the City under this contract.

SECTION 10.07 MEASUREMENT AND PAYMENT

Article 7.1 Method of Measurement

All Work completed under the Contract shall be measured by the Engineer according to United States standard measures, unless otherwise stated in the bid proposal.

When any vehicle delivers to the project classified fill or backfill of any kind, bedding material, leveling course, pavement materials, or any other material measured by weight, the driver of the vehicle shall give to the inspector a legible "original" computer-generated or machine-printed weight ticket with the following information:

1. Vehicle identification number.
2. License number & associated trailer license number(s).
3. Tare weight of the vehicle(s).
4. Gross weight of the loaded vehicle(s) as registered on the scale.
5. Maximum allowable vehicle weight (MAVW) or legal gross weight of the vehicle(s) as permitted by Valdez City Code Sections 10.04.040.
6. Sequential ticket number, date, pay item in words, and project location.
7. Pit location and name of scale operator.

The Owner will not pay for that portion of the load in excess of the legal gross weight.

Vehicle(s) shall be tared a minimum of once daily by the scale operator. The Engineer may request additional tares to be done at any time the scale is operational. The Engineer may also require that he be present when tares are done.

If the Contractor is not providing fill materials from a commercially established material source, and if the Contractor currently does not have at the other approved material source a computer-generated or machine printed weight ticket system, the Contractor shall furnish competent scale operators to weigh all materials measured and paid for on a weight basis. The scale operator(s) shall operate the scale(s) and keep records as directed by the Engineer, including the information as listed in the above seven items. In addition, the scale operator will keep a scale diary on a project by project basis. The scale diary shall be presented to the Engineer, on a daily basis, certifying that entries in the diary are true and correct for the specific project. The Owner shall make no direct payment to the Contractor for furnishing scale operator(s), equipment, and expendables required, the costs thereof being considered an incidental Contractor obligation. The accuracy of all scales, both private and commercial, is the responsibility of the Contractor. The Contractor shall maintain scales according to the specifications, tolerances and regulations for commercial weighing and measuring devices contained in the National Bureau of Standards, Handbook 44, as adopted by Alaska Statute, Section 45.75.050(d).

Article 7.2 Scope of Payment

The Contractor shall accept the compensation as herein provided in full payment for the Work. The Contractor shall do all things necessary to perform and to complete the Work according to the Contract Documents, including but not limited to furnishing all labor, tools, implements, machinery, supplies, materials, water, heat, utilities, transportation, and permits necessary to perform the Work. The Contractor shall be responsible for all loss, damage, or liability arising from the nature of the Work or from the action of the elements or from any unforeseen difficulties which may be encountered. Work paid for under one item will not be paid for under another item.

The contract price shall constitute full compensation for furnishing all plant, labor, equipment and materials, and performing all operations required to complete the Work as specified and as shown on the drawings or otherwise directed. Notwithstanding the omission or mention of any incident or incidental Work, the contract price and payment shall also constitute full compensation for all work incident or incidental to completion of the items, unless such Work is otherwise specifically mentioned for separate payment under another bid item. In the event any Work is required by the specifications or by the bidding schedule, and is not directly incident or incidental to the completion of any such items, the contract price or prices for all enumerated items shall also constitute full compensation of such Work.

In this section, the terms "construct, furnish, install, erect, place, and prepare," shall be construed to mean that the bid item(s) is/are complete, in place, and approved by the Engineer.

Article 7.3 Payment for Time and Material

When extra work is ordered by the Engineer to be done on a time and material basis, such work will be paid for as follows:

Labor:

The payment to be made for labor shall be the direct hourly cost of labor stated on the certified payroll for each labor classification plus other direct labor costs including, but not limited to, FICA, Workers' Compensation, ESC, and public liability and property damage insurance when premiums are based on a percentage of payroll. The time allowed will be the number of hours worked directly on the Time and Material account.

Material:

Payment for materials and supplies, including freight, will be based on the direct cost of the material and supplies as verified by appropriate invoices.

Owned Equipment:

For any machinery or special equipment (other than small tools) which has been authorized by the Engineer, the Contractor shall receive the rental rates in the current edition and appropriate volume of the "Rental Rate Blue Book For Construction Equipment," (hereinafter referred to as the "Blue Book"), published by Primedia Information, Inc. Hourly rental rates shall be determined as follows:

The established hourly rental rate shall be equal to the adjusted monthly rate for the basic equipment plus the adjusted monthly rate for applicable attachments necessary to perform the Work, both divided by 176, and multiplied by the area adjustment factor, plus the estimated hourly operating costs listed in the Blue Book.

The area adjustment factors shall be applied for those sections of the "Blue Book" containing an area adjustment map.

The "Equipment Life" adjustment factor sections shall not apply.

For equipment not listed in this schedule, the Contractor shall receive a rental rate as agreed upon before such work is begun. If agreement cannot be reached, the Engineer reserves the right to establish a rate on similar equipment in the schedule or prevailing commercial rates in the area.

Rented Equipment:

Equipment rented or leased specifically for Work required under this section shall be authorized in writing by the Engineer prior to the equipment being committed to the Work. The Contractor shall be paid invoice price plus fifteen percent (15%).

Equipment previously on the site and utilized in the Time and Materials Work, will be paid at invoice price plus fifteen percent 15%, provided the hourly rate for this equipment shall not be greater than the hourly rate paid for that same equipment for other Work in this contract.

Time for both owned and rented equipment will be recorded to the nearest one-quarter (1/4) hour for purposes of computing compensation to the Contractor for equipment utilized under these rates.

The equipment rates for both owned and rented equipment as determined above shall be full compensation, including overhead and profit, for providing the required equipment and no additional compensation will be made for other costs such as, but not limited to, fuels, lubricants, replacement parts or maintenance. Cost of repairs, both major and minor, as well as charges for mechanic's time utilized in servicing equipment to ready it for use prior to moving to the project and similar charges will not be allowed.

When it is necessary to obtain equipment from sources beyond the project limits exclusively for Time and Materials Work, the actual cost of transferring the equipment to the site of the Work and return will be allowed as an additional item of expense. Where the move is made by common carrier, the move-in allowance will be limited to the amount of the freight bill or invoice. If the Contractor hauls the equipment with his own forces, the allowance will be limited to the rental rate for the hauling unit plus operator wages. Move-in allowance shall not be made for equipment brought to the project for Time and Materials Work which is subsequently retained on the project and utilized for completion of contract items.

Miscellaneous:

No additional allowance will be made for general office overhead, the use of small tools having a value of Five Hundred Dollars (\$500) or less, or other costs for which no specific allowance is herein provided.

Allowances:

In addition to the direct costs of labor and material incurred by the Contractor, the Contractor shall be entitled to an allowance of twenty-five percent (25%) of the direct cost for profit and overhead. This allowance does not apply to owned or rented equipment.

If Work is performed by a Subcontractor, the Subcontractor actually performing the Work shall be entitled to those allowances for overhead and profit listed above, and each subsequent higher tiered Subcontractor or Contractor shall be allowed an additional ten percent (10%) of the Subcontractor's direct costs.

The allowance made in accordance with the terms outlined above will be understood to be complete reimbursement and compensation for all project office and office staff, general office overhead, use of tools, and small equipment, overhead expenses, bond cost, insurance premiums, profits, indirect costs, delays impacts on the rest of the Work and losses of all kinds and other items of cost not specifically designated. No other reimbursement, compensation or payment will be made for time and material work.

Any allowance made by the Contractor to a Subcontractor, other than specified herein, shall be at the expense of the Contractor.

The Contractor shall provide to the Engineer, on a daily basis, documentation of Time and Materials work, including time cards, payrolls, invoices for materials, quantities, unit costs, and other information as required by the Engineer. The time for labor and equipment shall be approved by the Owner's representative daily as the Time and Materials work proceeds.

Work performed for payment by Time and Materials shall be governed by the same provisions as all other Work included in the contract.

Article 7.4 Advances on Materials

The Contractor may request advance payment for materials to be incorporated in the Work, provided such materials are delivered and stored at the site, or if approved by the Engineer, at another site within the City. The Contractor shall be solely responsible for the protection of these materials. Only the Contractor's costs of materials (including freight) as verified by invoices, will be considered for such advance payments by the Owner.

No payment for materials shall be made on any single invoice of material the value of which is not at least \$5000. No advance shall be made for fuels, supplies, forms, lumber, falsework, or other materials, or on temporary structures of any kind which will not become an integral part of the finished construction. Retainage will not be withheld for advance payment for materials to be incorporated in the Work. However, once the materials have been incorporated in the Work and payment is requested the retainage in Article 7.5, progress payments shall apply.

The Contractor shall make available to the Engineer evidence of payment for the materials for which he/she is requesting advances, insurance to assure replacement if lost, stolen or damaged, and other information the Engineer may request.

Article 7.5 Progress Payments

The Contractor shall submit to the Owner an Application for Payment, on the forms furnished, supported by such data as the Owner may require substantiating the Contractor's right to payment for Work done during the preceding pay period. The Owner will, within eight (8) working days after receipt of the Application for Payment, either approve a Partial Payment Estimate and present it to the Contractor for signature or notify the Contractor in writing his reasons for withholding approval. Approved Partial Payment Estimates shall be returned to the Owner within two (2) working days after execution by the Contractor. The Owner will then process the Approved Pay Request and make payment to the Contractor within thirty (30) calendar days. If the Owner fails to make payment within thirty (30) days (twenty-one (21) calendar days if the project is funded by with State of Alaska grants) of receipt of the Application for Payment, the Contractor may, upon seven (7) working days written notice to the Owner and Engineer, suspend the work. The Contractor shall take every precaution to prevent any damage or unreasonable deterioration of the Work during the time it is suspended. The Owner may require a schedule of values, or cost breakdown for any lump sum payment contract item.

No interest shall accrue and no interest shall be paid on sums which are withheld as provided for hereinafter.

Withholding: The Owner may withhold from a progress payment for any of the following reasons:

1. 10% Retainage (Defined in bid documents as required);
2. Defective Work;
3. Claims made directly against the City alleging an act or omission on the part of the Contractor, Subcontractors, or their agents in connection with the Work;
4. Damage to the City
5. Reimbursements for Work done by the Owner because of any failure to carry out the Work in accordance with the Contract Documents;
6. Uncompleted incidental work, not earning direct payment, including but not limited to testing, cleanup, updating of progress schedules, preparation of Record Documents, etc.;
7. Liquidated Damages;
8. Claims by Subcontractors, suppliers, laborers, or the Alaska Department of Labor;
9. The amount of any withholding for items 1-6 shall be the reasonable value of the Work or remedy to be accomplished as estimated by the Engineer, without regard to bid amount or cost to the Contractor. The amount of withholding items 7-8 shall be in accordance with the claimed amount or the applicable contract provisions.

Progress payments shall not be construed as an acceptance or approval of any part of the Work covered thereby and they shall in no manner relieve the Contractor of responsibility for correcting defective workmanship or material.

The estimates upon which progress payments are based are not represented to be accurate estimates, and all quantities shown therein are subject to correction and any subsequent pay estimate. If the Contractor uses such estimates as a basis for making payment to Subcontractors, he does so at his own risk and shall bear all loss that may result.

The making of progress payment under the Contract, either before or after the date set for completion of the Work, shall not operate to invalidate any of the provisions of the Contract or to release the Surety.

Article 7.6 Payment of Claimants

Any claim received by the Engineer against the Contractor or Subcontractors from any materialmen, laborer, supplier, Subcontractor, or the Alaska Department of Labor will be forwarded to the Contractor by certified mail as soon as practical following receipt by the

Engineer. Within twenty-one (21) days after the Contractor's receipt of the said notice, the Contractor shall notify the Engineer in writing by Certified Mail that the said claim is contested or provide proof that the claim has been satisfied. If the Contractor contests the claim, the Contractor shall describe in detail how the Subcontractor was paid or why the Subcontractor should not be paid and furnish the 3-point statement described hereafter. If the Contractor does not respond during the time allotted above, this lack of notice shall constitute consent by the Contractor to have the owner pay the claim from the earnings of the Contractor. The Owner shall not be responsible to the Contractor if the Contractor subsequently contests the validity of the claim.

Sums withheld pursuant to disputed claims will not be paid to the claimant except where compelled by legal authority. Such sums may be paid to the Contractor upon the filing of a statement by the Contractor and his Surety on the form furnished by the Engineer stating that: (1) the Contractor contests the validity of the claim; (2) that the Surety acknowledges responsibility for the payment of the claim in the event it is valid and; (3) that the Contractor and the Surety specifically agree to hold the City harmless for making payment to the Contractor of the sums withheld.

In the event that the Contractor revokes consent to pay a claimant as provided herein and refuses to execute the said statement referenced above, the City may institute an interpleader action in Superior Court, Third Judicial District, and all Court costs and attorney's fees incurred by the City shall be paid by the Contractor or the Surety. Claimants are not intended beneficiaries of this Article and shall have no recourse against the City for any failure to pay claims from sums withheld from the Contractor.

Article 7.7 Final Payment

Upon completion of the Work and issuance of a certificate of completion by the Engineer, the Contractor shall submit a request for the Final Payment to the Engineer. The retainage shall be held by the Owner for a period of not less than ninety (90) days following the Final Acceptance of the Work. No Final Payment shall be made until the Contractor has filed with the Engineer, prior to acceptance of the Work, a notarized Certificate of Compliance in the form substantially as follows:

I (we) hereby certify that all Work has been performed and materials supplied in accordance with the Contract Documents for the above Work, that not less than the prevailing rates of wages as required by the State Statute have been paid to laborers, workmen, and mechanics, that all payroll taxes have been paid, and that all claims for material and labor and other services performed in connection with these Contract Documents have been satisfied.

There shall be deducted from the final payment any sums withheld pursuant to Article 7.6 - Payment of Claimants.

Article 7.8 Correction of Work after Final Payment

Neither the final payment nor any progress payment shall relieve the Contractor of his responsibility for paying all costs resulting from defects in materials or workmanship supplied under the terms of this contract, and for correction of those defects, for a period of one year following the Final Acceptance Date. The Owner shall give notice of observed defects with reasonable promptness. The Contractor shall initiate corrective action within five (5) working days after written notification from the Owner or the Owner will make other provisions to complete the Work and all costs shall be paid by the Contractor.