

**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:

AAC	Alaska Administrative Code (x AAC y where x=Title, y= Chapter)
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
AS	Alaska Statute (AS x.y where x=Title, y=Chapter)
ASA	American Standard Association
ASTM	American Society for Testing and Materials
ATM	Alaska Traffic Manual
AWS	American Welding Society
AWWA	American Water Works Association
PWU	Petersburg Water Utility
EPA	Environmental Protection Agency
GCI	General Communications Incorporated
CPSS	City of Petersburg - Standard Specifications
MUTCD	Manual of Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NESC	National Electrical Safety Code
NFS	Non-Frost Susceptible per Division 20 – Standard Construction Specifications for Earthwork
OSHA	Occupational Safety and Health Act or Administration

**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 Proposal** - 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.

**C.P.S.S.** - City of Petersburg Standard Specifications. Internal references to C.P.S.S. are in the form of Division, Section, Article, SubArticle.

**Change Order Proposal** - A written proposal prepared by the Contractor describing and documenting added costs or time extensions that the Contractor claims have been incurred due to unforeseen Work and other matters not contemplated or adequately provided for in the Contract Documents.

**Change Order or 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 by or adequately provided for in the Contract Documents.

**City** – City of Petersburg

**Cleanup** – The restoration of all surface improvements including contouring; grading; required seeding and landscaping; all signage; removal of construction debris; restoration and cleaning of haul roads; and all other associated Work.

**Contract** - The four (4) page form agreement entitled "Contract" executed by the Contractor and then by the Owner on behalf of the City. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral.

**Contract Date** - The date on which the Contract is executed by the Owner.

**Contract Completion Date** - The date specified in the Contract Documents 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 Contract Documents for the completion of the Contract, the Contract Completion Date shall be those specified number of days after the effective date of the Notice to Proceed, including authorized time extensions.

**Contract Documents** - The Contract and those documents described in the Contract. The Contract Documents can only be amended by written Change Order. Instructions, clarifications, and directives issued by the Engineer under Section 10.05, Article 5.1 - Authority of the Engineer are not Contract Documents.

**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, joint venture, limited liability corporation, or limited liability partnership, or authorized agent thereof, executing the Contract and performing the Work under the terms of the Contract Documents.

**Council** – The City Council of the City of Petersburg

**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, President's Day, Martin Luther King Day, 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.

**Deviation Request** – A Contractor initiated request for a revision in the requirements of the Contract Documents.

**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 agent and/or 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 has been constructed, inspected, and accepted pursuant to the provisions of Section 10.05, 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 agent and/or 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 calendar 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 in the opinion of the Engineer will perform in an equal or better manner the duties imposed by the general design shall be considered equally acceptable provided the material, article, or equipment so proposed will not require a change in the related Work.

**Owner** - The Department or Agency of the City of Petersburg identified in the Contract. 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.

**Project Manual** - The bound documentary information organizing the documents into two general categories: (1) those describing the Bidding Documents, and (2) the Contract Documents.

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

**Purchasing Agent** - That person within the City of Petersburg who is vested with all authority pertaining to the procurement of supplies, services, and construction.

**Request For Information (RFI) or Clarification** – A written document prepared by the Contractor to request information or clarification of the Contract Documents. Each RFI shall be numbered consecutively and a log maintained of submittals and responses.

**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.

**Subcontractor** - Any individual, firm, corporation, partnership, joint venture, limited liability corporation, or limited liability partnership, or authorized agent thereof, 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 Work required by the Contract has been inspected and in the opinion of the Engineer is essentially completed and available for the Owner's beneficial use for the purpose and in the manner intended by the Contract Documents, including satisfactory acceptance of all required testing .

**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 shall forfeit the sum of the Guarantee when the Bidder fails to execute the Contract after the Bid is accepted by the City.

**Technical Specifications** - Divisions 20 through 80 of CPSS.

**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 entity (person, corporation, company, agency, or other) that furnishes service(s) (including petroleum and petroleum products, electricity, sanitary sewer, communications, water, natural gas, traffic signal control, and storm sewer) utilizing conduit, pipe, wire, cable, or other transmission lines.

**Winter Suspension** - The period of time through which no field work is accomplished due to adverse winter weather conditions as permitted by Section 10.05, Article 5.32 – Winter Suspension.

**Work** - 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 may 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. Communication via electronic facsimile (FAX) or electronic mail shall not be considered proper 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 Bidder further declares that the amount(s) bid are for the total Work as contained in the Contract 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 the 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. The Bidder 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 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 be 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 the Contract. Any failure by the Contractor to acquaint himself with the available information shall not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the Work.

The Bidder is encouraged to support the City's Disadvantaged and Woman-Owned Business Enterprises (DBE/WBE) program. The Bidder shall comply with the DBE/WBE Specifications if included in the Contract. The Bidder shall comply with the requirements of the Equal Opportunity Special Provisions as contained in the Bid and resulting Contract.

### **Article 2.2 Interpretation or Correction of Bidding Documents**

Bidders shall notify the Purchasing Agent 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 Purchasing Agent and shall arrive at least seven (7) 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 should 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. The Bidder may bid an item at no cost and shall insert the words "no cost" in the space provided for any no cost item. 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 shall govern. Bids may be rejected if they show any omissions, alteration of the forms, additions not required, conditional or alternate bids not required, 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 ten percent (10%) of the total amount of the Bid if the total amount of the bid is \$100,000 or more, with good and sufficient corporate surety acceptable to the City. If the total bid amount of the bid is less than \$100,000, the bid shall be accompanied by a bid guarantee, in the form specified above, in the amount of \$2,000,. Bid Guarantees for the three (3) low Bidders shall 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 Purchasing Agent and as required by the bidder's checklist. The Bidder shall comply with the City of Petersburg Office of Equal Opportunity Disadvantaged Business Enterprise Program Specifications for City Contracts, including submittal requirements for bids, prior to and after award. See the Disadvantaged and Women-Owned Business Enterprises (D/WBE) Specifications Section of the Invitation to Bid for participation goals for each particular project.

## **SECTION 10.03     AWARD AND EXECUTION OF CONTRACT**

### **Article 3.1     General**

The provisions of this Section are intended to be supplemental to, and not to replace Petersburg City Codes.

### **Article 3.2     Receipt and Opening of Bids**

Bids shall be submitted to the Purchasing Agent prior to the time of opening specified in the Invitation to Bid and the exact date and time of receipt of Bids shall be recorded. Late Bids shall 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 shall be determined by the time stamp of the Purchasing Agent.

Facsimile bids shall not be considered. Modification by facsimile of bids already submitted shall be considered if received in writing by the Purchasing Agent 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 shall attach to the City for the premature opening of or the failure to open a Bid not properly addressed and/or identified.

Bids may be withdrawn in person, by written letter, or by facsimile when such request is received by the Purchasing Agent PRIOR to the time specified for receipt of Bids.

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 shall 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**

All bidders shall hold a valid Alaska Contractor's license per AS 08.18.

The Purchasing Agent reserves the right to determine whether or not a Bidder is a responsible Contractor. The Purchasing Agent may require the Bidder to submit such information as he 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 Agent to determine the Bidder as non-responsible.

Any determination that a Bidder is non-responsible shall be made by the Purchasing Agent using Petersburg City Code as the basis for that determination. Such determination shall 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.

A Bidder's representations concerning his qualifications shall 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.

If a Contractor has had a contract terminated by the Owner for cause as provided in Section 10.05, Article 5.28 – Termination of Contract by Owner, 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.

### **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 Purchasing Agent, 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 lowest responsive Bid. When the Bidding Documents contain a basic bid and additive or deductive 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 shall be determined by the lowest combination of the basic bid and as many additive alternates as may be selected within the funds available. For evaluation purposes, additive alternates shall be chosen in the order listed in the Bid. The Purchasing Agent may bypass any additive alternate whose selection would cause the Contract to exceed the funds available.

When the Bidding Documents contain deductive alternates and the Purchasing Agent determines that including any or all of the deductive alternative is in the best interest of the City, the lowest bid for each Bidder shall be calculated by deducting the value of applicable alternates from the basic bid. The Purchasing Agent may bypass any deductive alternate to maximize the use of available funds.

The Purchasing Agent shall use the list of priorities in the bid schedule to determine the low bidder only. After determining the low bidder, an award may be made on any combination of bid items provided: (1) it is in the best interest of the City; (2) funds are available at the time of award; and (3) the low bidder's price for the combination to be awarded is less than the price offered by any other responsive, responsible bidder.

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 the Purchasing Agent and specified in the Contract.

Unless otherwise specified in the Invitation to Bid, Notice of Award or rejection shall be given within forty-five (45) days of Bid opening. The notice shall be in writing and signed by the Purchasing Agent or authorized designee. A Notice of Award shall constitute an acceptance of the Bid. No other act(s) of the City or its representatives shall constitute an acceptance of a Bid. The acceptance of a Bid shall bind the successful Bidder to execute the Contract.

### **Article 3.5 Bonds, Insurance, EEO and DBE/WBE Forms**

The successful Bidder shall furnish the Purchasing Agent a Performance and Payment Bond in the full amount of the Contract. The Bond is for the faithful performance of the Contract in all respects including, but not limited to, payment for all materials and labor. All alterations, extensions of time, additional Work and other changes authorized by the Contract Documents may be, at the option of the Owner, made without securing the consent of the Surety or Sureties. Contractor shall provide the Bond with a good and sufficient corporate surety acceptable to the City. 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 Purchasing Agent a certificate of insurance pursuant to the provisions of Section 10.06, Article 6.9 – Insurance, and shall execute and furnish the Purchasing Agent all the required EEO and DBE/WBE forms.

The Bidder shall exercise positive efforts to comply with the Equal Employment Opportunity and Disadvantaged/Woman Owned Business Enterprise requirement policies of the City. The Bidder shall familiarize himself with the Equal Opportunity Special Provisions and Disadvantaged/Woman Owned Business Enterprise Specifications for City Contracts, including submittal requirements for bids, prior to award and after award.

### **Article 3.6 Execution of Contract**

The successful Bidder shall execute the Contract and furnish the required bonding and insurance within five (5) working days after Notice of 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 bond and insurance certificate are received by the Purchasing Agent. 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 shall execute the Contract within ten (10) 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 shall be supplied upon request with twelve (12) sets of the Contract Documents exclusive of C.P.S.S. The Contractor may obtain any additional documents from the Engineer by compensating the Owner for the cost of the printing involved.

The Notice-to-Proceed shall 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 unless otherwise specified 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. All warranty Work shall be at the sole expense of the Contractor. All materials and workmanship directly or indirectly involved in repairs or replacements under this Article shall carry an extended warranty of not less than one (1) year from the date of the Engineer's written acceptance of the repair or replacement Work, or through the warranty period for the original project Work, whichever is longer.

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.

The Warranty shall run concurrently with the Plant Establishment Period for landscaping Work pursuant to Division 75 – Landscaping Improvements unless otherwise specified by the Engineer in writing.

At the completion of the Warranty and Plant Establishment Periods, the Contractor and Owner shall conduct a pre-Warranty Inspection. All deficiencies indicated by the pre-Warranty Inspection shall be listed and promptly furnished to the Contractor for action. When all listed deficiencies have been corrected, the Contractor shall notify the Engineer and a final Warranty Inspection will be performed. When the Warranty Inspection verifies correction of any listed deficiencies, the Engineer shall issue a Certificate of Completion.

## **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 common 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 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 description of the entire scope of Work. A requirement occurring in one Section of the Contract Documents 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/or 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 Request For Information (RFI) 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, Drawings and details that give rise to the request. If not provided in the Contract Documents, a copy of the RFI form shall be obtained from the Engineer. Engineer shall respond to the RFI in writing within ten (10) working days. The Engineer's response shall serve to clarify and interpret the existing Contract requirements and shall not be construed as requiring or directing a change in the Work.

#### **Article 4.3 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.P..S.S., the Special Provisions, or the Drawings. The Contractor is responsible to determine that all submittals, certifications, and/or requirements are met, whether or not specifically addressed in the Submittal List.

#### **Article 4.4 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 \$30,000 or 10% of the Original Contract Amount without Council approval.

#### **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 quantity 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 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 costs 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 Section 10.05, 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 is 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 shall 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 proper submittals, 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 Section 10.05, Article 5.21 - Claims for Additional Compensation.

The provisions of this Article shall not apply to reduced quantities resulting from the termination, or partial termination, of the Contract for cause or for the Owner's convenience.

#### **Article 4.7 Reference Stakes and Surveying**

Bench Marks and/or reference points have been identified and/or placed initially by the Engineer, and the horizontal and vertical reference locations are indicated in the Drawings. The Contractor shall ensure that all construction surveying Work required is completed in strict conformity with Division 65 - Standard Construction Specifications for Construction Survey.

At various points throughout the Work, Contractor's operations may disturb existing survey monuments, bench marks, or referenced points. If Contractor disturbs these items, Contractor shall replace them at Contractor's expense. Contractor shall replace at Contractor's expense, survey monuments, bench marks, 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 Contractor.

#### **Article 4.8 Work Incidental to the Contract**

Several items of Work, not covered in the Bid Proposal, are incidental to the cost of the Contract. These items shall include, but are not limited to, the following:

1. Type 1 Storm Water Pollution Plan
2. Utility location and verification.
3. Shoring utility and power poles, and protecting overhead and underground utilities.
4. Removal and replacement of concrete barriers.
5. Providing safe hauling routes for transporting excavation material, classified fill, other construction materials, and site access.
6. Dewatering of roadway excavation and pipe trenches, unless payment is provided elsewhere.
7. Resetting disturbed property corners or monuments.
8. Removal and reinstallation of manholes and catch basins unless identified as a bid item. Removal and replacement of storm drain and subdrain pipes and cleanouts unless identified as a bid item.
9. Removal and delivery of salvaged electrical equipment.
10. Furnishing and installing bonding and grounding conductors for electrical installations.
11. Post-construction cleanup.
12. Reimbursement to utilities for associated inspection or relocation.
13. Other items indicated on the Drawings or in these Specifications.

## **Article 4.9 Disposal Sites**

Except as otherwise stated in the Special Provisions, the Contractor shall make his own arrangements, assume all costs, and obtain all necessary permits in connection with disposal sites. Contractor shall furnish a disposal site for trees, brush, oversized boulders, and other objectionable debris or materials.

Disposal sites shall be located and maintained in such a manner as to prevent a public nuisance.

When the Contractor makes proper arrangements for disposal on private property, he 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 and the appropriate City Permit for grading and/or fill. The written permission shall specifically provide that the property owner shall 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/or property damage incurred outside of the disposal site.

Waste Disposal. Prior to construction, the Contractor shall submit a description of his plan for disposing of unsuitable materials and waste resulting from the Work under the Contract. If any material is disposed of in unauthorized areas, the Contractor shall remove the material and restore the area to the condition of the adjacent undisturbed areas at no cost to the Owner.

## **Article 4.10 Protection of Persons, Property and Environment**

The Contractor shall be responsible for initiating, supervising, and maintaining all safety programs and precautions in a manner to prevent damage, injury, or loss to the Work employees, site visitors, the public, the environment, and property. These safety requirements are applicable to the Work whether on-site or off the site for Work under the control, custody, or care of the Contractor. These responsibilities apply to all adjacent sites and their improvements including landscaping, walks, roadways, structures, utilities and drainageways. If the Contractor encounters material on the site that may be reasonably identified as asbestos-containing material (ACM), polychlorinated biphenyl (PCB), or other hazardous materials not requiring abatement as part of the Work, the Contractor shall stop the Work immediately in the affected area and notify the Owner's Representative and Owner in writing. The Work shall not be resumed in the affected area until a final determination has been made by the Engineer on the status of the material in question.

Until Contract completion, the Contractor shall be solely and continuously responsible, twenty-four (24) hours per day, seven (7) days per week, for the safety measures outlined in this Article, including, but not limited to, 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 the Petersburg Police Department and the Petersburg Fire Department.

During periods of suspension of Work, refer to Section 10.05, Article 5.24 – Suspension of Work and Article 5.32 – Winter Suspension, for areas of responsibilities.

Protection of Water Resources. The Contractor shall control the disposal of fuels, oils, bitumens, calcium chloride, acid, or any other 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 the Contract. Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, and sewage from entering established drainages.

#### **Article 4.11 Private Property in Right-of-Way**

Unless otherwise specified in the Drawings and/or Specifications, the Engineer shall contact the property owner to remove any fences, trailers, sheds, machinery, or other miscellaneous personal property is located within the right-of-way, and/or utility easements which interferes with construction. 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) shall be repaired or the items replaced in kind by the Contractor at no cost to the City.

Unless otherwise stated in the Drawings and/or 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 Work such as resetting fences or restoration of personal property items to their original or alternate locations shall be specified in the Drawings and/or Specifications. If payment for such Work is not otherwise specified in the Drawings and/or Specifications, such Work shall be considered incidental to the Contract unless otherwise negotiated with the Engineer.

#### **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 comply with this Article at all times. 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. The Contractor shall 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.

The Contractor shall conduct his Work to insure that there is no disruption of mail service, school bus service as applicable, trash collection, access by emergency vehicles, or any unnecessary disruption of general access to any business or private residence.

If the Contractor's Work is delayed because of any construction and/or transportation activities of nearby construction, regardless of whether authorized by the Owner, the Contractor shall not be entitled to additional compensation from the Owner. The Contractor may 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/or expenses, including attorney's fees, by the Contractor or third-parties, arising directly or indirectly as a result of nearby construction and/or transportation impacts.

#### **Article 4.13 Traffic Control Plan**

The Contractor shall conduct his operations to minimize interference to vehicular traffic. The Contractor shall submit a Traffic Control Plan (TCP) showing street closures, partial closures, detours, and all pertinent traffic control. The Contractor's TCP shall be reviewed by the Engineer. Emergency units shall be provided vehicular access at all times. Construction operations involving a closure of an arterial street shall not commence until after 9:00 a.m. unless otherwise approved by the Engineer. Requests for arterial street closures shall be made sufficiently in advance of the planned closure to allow a minimum of seventy-two (72) hour advance notice to the public.

When a street closure or partial closure is approved, the Contractor shall 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. 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 Manual on Uniform Traffic Control Devices (MUTCD). 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 from payments due the Contractor. Action by the Owner to erect barricades, signs, or lights does not relieve the Contractor's indemnification obligations set forth in Section 10.06, Article 6.10 - Indemnification.

The City shall require a minimum of three (3) days for TCP review time for streets with the following classification:

1. Minor arterials and higher must be submitted at least ten (10) days prior to the scheduled closure (three (3) day review time, seven (7) day advertisement/public notice time).
2. Streets listed as collectors must be submitted no later than six (6) days prior (three (3) day review time, three (3) day advertisement/public notice time).
3. All other streets must be submitted no later than three (3) days prior (three day (3) day review time, no advertisement/public notice required).

The TCP shall conform to 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 Alaska Traffic Manual (ATM) prepared by the Alaska Department of Transportation and Public Facilities. When a conflict exists between C.P.S.S. and the ATM, the requirements of Specifications or any Special Provisions shall govern.

If Work shall 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.

When, in the opinion of the Engineer, traffic maintenance is deficient, inadequate, improper, or conditions exist such that public safety would be adversely affected, or public convenience unnecessarily degraded, the Contractor shall 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 promptly comply with such instruction, the Engineer

may suspend any or all Work on the project until satisfactory, corrective action is taken. If the Contractor fails to take such prompt action, the Engineer shall order such Work, as deemed necessary to ensure public safety and/or to enhance the public convenience, to be accomplished by an Owner-selected workforce. The cost of this Work shall be deducted from monies otherwise due the Contractor.

#### **Article 4.14 Maintenance and Drainage**

The Contractor shall maintain 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 maintain existing drainage patterns disturbed or utilized by construction, including re-establishment of drainage ditches, swales and gutter flowlines to their preconstruction condition, grade, and elevation.

When cleaning paved streets, curb and gutters, alleys, and sidewalks, the Contractor shall not flush the streets using only water, but shall use such methods as established by the Engineer for sweeping operations. The Contractor shall prevent any spillage from entering any storm drains.

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.

Contractor shall repair or replace catch basins, storm drain manholes, or storm drains damaged during construction as an incidental item of construction at no additional cost 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.

For dust and mud control, 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 avoid causing a hazard or nuisance to others.

The Contractor shall provide water or other dust palliatives and appropriate distribution equipment as required for dust control on their haul roads and Work areas. The Contractor shall assure that all loose material and debris has been removed from haul vehicles prior to their leaving or entering the site to minimize spills of material on road surfaces.



All existing paved areas and roadways adjacent to the project construction site or used as haul roads, shall be kept clean of dirt, mud, and debris resulting from the Contractor's Work during the construction period.

**Article 4.15 Temporary Erosion Control and Storm Water Pollution Prevention Plans for Construction**

Contractor shall provide all erosion and sediment control measures and best management practices necessary for the prevention of water pollution, erosion, and/or siltation. These measures are for the protection of streams, lakes, ponds, wetlands and tidal waters, without regard to the size of the Project.

Contractor shall comply with all the requirements set forth in Alaska Administrative Code, 18 AAC 70.

Unless an erosion and sediment control plan is specifically identified and included in the Drawings or other Contract Documents, Contractor shall provide a Storm Water Pollution Prevention Plan (SWPPP) describing measures and best management practices to be employed during construction. The SWPPP shall be one of three types:

Type 1 SWPPP	Projects that disturb less than ten thousand (10,000) square feet but that either disturb more than five hundred (500) square feet or are deeper than four feet (4') or both
Type 2 SWPPP	projects that disturb between ten thousand (10,000) square feet to one (1) acre
Type 3 SWPPP	projects that disturb one or more acre

Contractor shall implement the erosion and sediment control measures immediately after Contractor mobilization and before commencing any clearing, grubbing, excavation, pavement removal, or other operations or activities which may result in erosion or siltation.

Erosion and sediment control measures and best management practices 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 and practices as required. In order to prevent erosion or siltation, clearing, grubbing, grading, filling and other operations shall be scheduled and performed such that permanent erosion control measures follow immediately. Permanent erosion and sediment 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 and practices as required.

Erosion and sediment control measures shall remain in place and in good functioning or working condition until Work is complete under the Contract and final stabilization of the permanent erosion and sediment control measures is achieved and accepted by the

Engineer. The continued maintenance of these erosion and sediment control items and replacement of damaged items shall be the ongoing responsibility of the Contractor.

The Engineer may suspend Work pursuant to Section 10.05, Article 5.24 – Suspension of Work if the Contractor fails to fully carry out the requirements of the erosion and sediment control plan. After suspension of the Work, the Owner may perform or contract the performance of the erosion and sediment control measures and deduct those costs from the Contractor's progress payments.

Payment for a Type 1 SWPPP is incidental to the Contract and no separate payment shall be made. Pay items for Type 2 and Type 3 SWPPPs shall be indicated in the Special Provisions.

#### **Article 4.16 Temporary Utilities**

The Contractor shall provide and pay all costs for temporary utilities including 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 4.17 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 and these documents are not necessarily As-Builts; therefore, the depicted locations may not be exact or complete and the Contractor is cautioned to approach his Work accordingly. The Owner shall not be held liable for damages to utilities incurred during construction, including lost time and/or associated costs, due to deficiencies or omissions on the Drawings or these Specifications. At least forty-eight (48) hours 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 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 shall not be relocated to facilitate construction. If the Engineer determines that an existing utility must be permanently relocated because it is in direct conflict with the facility being constructed, the existing utility shall be relocated by the Utility Company at no charge to the Contractor. In the event a water or sewer service is relocated, it shall be installed in compliance with the minimum separation distances set forth in 18 AAC 80.

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 required to request locates through the Petersburg Call Before You Dig program (772-4430) a minimum of forty-eight (48) hours prior to any excavation.

No buried utility shall be covered until its owner has inspected and accepted it.

Certain utility companies may have facilities within the project limits and some or all of those utility companies may be relocating their facilities and installing crossings within the project limits throughout the project duration.

A. Trash

Contractor shall coordinate trash pick-up for local residents affected by the construction Work with the solid waste utility.

B. Water and Wastewater

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. shall 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.

Contractor shall schedule a walk-through of the project with the Engineer and check the existing condition prior to street reconstruction of sanitary sewer manholes, cleanouts and services, and water mainline valves, keyboxes, services, and hydrants. If adjustments are made to water or sanitary sewer facilities, the Contractor shall schedule and complete a final acceptance walk-through inspection of said facilities prior to scheduling this project's prefinal inspection, provide a Record Drawing, and list any new facility components.

The Contractor shall schedule and be responsible for obtaining all required permits and shall notify the Engineer of any change in status or condition of existing water and/or wastewater infrastructure. In the event water service may be interrupted during the course of construction, the Contractor shall adhere to the requirements of C.P.S.S.

C. Gas

This Article not used.

D. Electrical and Telecommunications

The Contractor shall accomplish all Work in close proximity to electrical or telecommunications facilities in conformance with clearance requirements in accordance with the latest edition of 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 feet (5') 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. Contractor shall support and protect exposed cables as prescribed by the respective electric and communications utilities. If Contractor damages an electric or communications cable, installed in accordance with an approved permit, cable shall be repaired by or replaced by the respective utility at Contractor's expense.

Hand digging is required within two feet (2') of a buried electrical or telecommunications cable. Once the utility's underground cable is exposed, it must be supported every two feet (2'), if it is not lying on the bottom of the trench. Any Work on the electric utility's facilities or infrastructure must be done by a Journeyman Power Lineman, with a State Certificate of Fitness. If an electrical or telecommunications cable is encountered during excavation, the cable shall be inspected for damage by the respective utility's operations personnel. If the cable condition appears acceptable, the cable shall be buried by the Contractor and

sand bedded per the utility's specifications. The cable shall be tested by the utility to ensure its integrity. Should the cable be damaged due to the excavation, the utility will install a new cable at the Contractor's expense.

If Contractor requests the electric or telecommunications utility to do any shoring of that utility's infrastructure, Contractor shall coordinate three (3) working days in advance of shoring with that utility's operations department.

For overhead electrical power lines, Alaska State Law requires at least ten feet (10') clearance between energized conductors and construction equipment and structures. Before working under or near electrical power lines, Contractor shall contact that utility's operations division so they will be aware of the situation.

Any landscaping in areas above buried electrical or telecommunications cables should be limited to bedding plants, small shrubs, or grass. No concrete walls or structures can be built over underground cables.

Contractor shall coordinate any changes in grade and/or earthwork fill/cut areas with electric and telecommunications utilities so adequate infrastructure depth of bury may be maintained.

Any relocation or repair of electrical or telecommunications facilities must be done by the respective utility's personnel. All relocation Work performed by the electric and/or telecommunications utility for the Contractor shall be at the Contractor's expense.

All necessary arrangements to be made with the Utility for compliance with AS 18.60.680 shall be arranged by the Contractor in advance of the project start date. All costs of compliance with these requirements, including charges by the Utilities, shall be borne by the Contractor.

#### E. Traffic Signal Control and Communications

The Contractor shall follow the requirements set forth in C.P.S.S. or in the Special Provisions.

Prior to start of Work that is in close proximity to utilities, Contractor shall coordinate with each utility as required by the respective utility and provide a minimum of forty-eight (48) hours notice.

Contractor shall provide the Engineer a minimum of forty-eight (48) hours notice of all utility walk-through inspections and area sweeps. Contractor shall conduct the utility walk-through inspection in the presence of the Engineer, unless the Engineer directs otherwise. Contractor shall furnish a copy of all utility inspection reports to the Engineer prior to commencing construction activities, and provide copies of post-construction inspection reports prior to applying for final payment.

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 indirectly out of any conflict between the Work under the Contract and any claim, interference, or delay for whatever reasons.

#### **Article 4.18 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 Substantial Completion Date.

#### **Article 4.19 Record Documents**

Contractor shall maintain Record Documents on the job site consisting of a complete set of drawings, survey line and grade books, and all Contract Documents. Contractor shall record (on Record Documents) and keep current on a daily basis all changes in location (both vertical and horizontal), material, equipment, and all changes in the Work. Contractor shall record all horizontal and vertical locations of all utilities encountered, in conformance with the requirements of Division 65, Section 65.02, Article 2.14 – As-built Surveys and Record Drawings. Contractor shall identify design dimensions, elevations, and grades with no change as being accurate by noting “ASB” adjacent to the design value. At all times Contractor shall make the Record Documents available to the Engineer.

The Contractor shall provide horizontal and vertical locations of all water and sanitary sewer service connections at the property line or lease lot line, including swing ties and offsets to property or lease lot corners. The Record Documents shall include two or more swing ties from prominent, permanent features to show the location of each installed water service connection. Contractor shall provide swing ties as close to perpendicular to each other as possible, and when property or lease lot corners are in, use them as swing tie references.

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

The Engineer shall review all Record Documents for completeness and conformance to the standards stated above. 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 Contractor to keep the Record Documents current and in the required condition shall be considered cause for additional withholding from the progress payments as provided in Section 10.07, Article 7.5 - Progress Payments.

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

Certification for Record Drawings shall be affixed to the final reproducible Drawings and shall include the following unqualified statement, which the Contractor must sign and date as a condition to Final Acceptance of the project.

*“This shall serve to certify that these Record Drawings are a true and accurate representation of the project as constructed.”*

A similarly prepared and affixed signed statement shall be included on other required Record Documents.

The development, preparation and presentation of all Record Documents is incidental to other Work and no separate payment shall be made.

#### **Article 4.20 Operating and Maintenance Manuals**

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 4.21 Ownership of Contract Documents**

Owner-furnished Drawings, Specifications, and copies thereof are the Owner's property. Contractor shall not use them on other projects and/or Work and shall return them to the Owner on request at the completion of the Work. Reuse of these materials without specific written authorization or adaptation by the Owner is prohibited and shall be at the risk of the user and without liability or legal expense to the Owner or their consultants. The Contractor shall hold harmless the Owner, Engineer, and Design Engineer and their consultants from any liability arising out of reuse of Drawings and/or Specifications supplied to the Contractor under the Contract.

## **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 shall 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 shall 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. The Contractor shall perform such changes in the Work in accordance with supplemental Drawings and instructions as the Engineer may issue. Any single change in the Work in excess of \$30,000.00~~15,000.00~~, or cumulative changes in the Work which will cause the total value of the Contract to exceed 110% of the original Contract amount requires City Council approval.

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, the interpretation of Contract Documents, and the merit of all Contractor claims for additional compensation or time extension submitted under Article 5.21 – Claims for Additional Compensation.

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

### **Article 5.2 Prosecution of the Work**

The Work shall not commence until a written Notice-to-Proceed has been received by the Contractor. The Work shall commence within ten (10) days after the effective date specified in the Notice to Proceed and shall be prosecuted vigorously and continuously. No mobilization to the site or field construction activity shall occur until after the required Construction Progress Schedule has been initially submitted in the form and detail required; however, the counting of Contract time shall continue. In this instance, no claim for delay or compensation of any kind shall be considered meritorious and shall not be paid or otherwise recognized. No Requests for Payment shall be accepted until after the schedule has been submitted in the form and detail required.



### **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, weather and ground condition restraints, and Work suspensions and other significant influences on the Contract amount and/or the time for completion of the Work. The Contractor shall include other significant features of the Work such as the submittal schedule, permit acquisition plan, material procurement milestones, plant and equipment procurement dates, and shipping schedules. Any Work plan requirements including project phasing shall also be included and identified in the Construction Progress Schedule. The bar chart shall include a graph representing the monthly percent of Work to be completed. The bar chart shall be revised and resubmitted as required by the Engineer, when conditions cause changes to the construction schedule, or on a monthly basis, whichever is sooner.

When required by the Engineer, the Contractor shall also deliver, at the same time the Construction Progress Schedule is delivered and in a form satisfactory to the Engineer, a Schedule of Values for Contract Payments for those lump sum items designated by the Engineer. When payment for the Work is based primarily on unit prices identified in the Bid Schedule, no Schedule of Values shall be required. However, when the Bid Schedule includes a mixture of unit prices and lump sum prices, and the lump sum prices represent a significant portion of the total Contract amount, then the Engineer reserves the right to require a Schedule of Values for specified lump sum items. The Contractor shall submit monthly partial Payment Estimates based on the Schedule of Values if they have been required. All Schedules of Values and Payment Estimates shall, as a minimum, be organized to be consistent with the Divisions and Sections of the Project Manual. The Engineer may require submission of revised construction schedules demonstrating the manner in which the Contractor will achieve the necessary rate of progress, 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.

In addition to the time-scaled bar chart described above, and when specified in the Special Provisions, the Contractor shall develop and submit to the Engineer for approval a time-scaled Critical Path Method (CPM) schedule. Both a hard copy and electronic copy of the CPM schedule shall be submitted. The Contractor shall revise and resubmit the CPM schedule to reflect any alteration in the sequence of scheduled activities or of the critical path with each partial payment request and at such other times as the Engineer may require, and at any time the Contractor determines that the critical path is altered by changes or other circumstances. The Contractor shall submit the initial CPM schedule to the Engineer no later than twenty-one (21) days from the effective date of the Notice to Proceed and at least monthly thereafter.

The Contractor shall organize the scheduled activities to be consistent with 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 scheduled activities. In addition, one or more scheduled activities shall be used to represent the submittal schedule, permit acquisition, materials procurement, plant and equipment procurement, shipping, and all other significant elements of the Work. The Contractor shall include activities that address weather and ground condition restraints, critical dates, holidays, periods of Work suspension, and all other restraints (i.e., all events that are critical or will become critical to the schedule).

All schedules, whether they are bar chart schedules or CPM schedules, shall include enough detail to adequately describe all important activities necessary to complete the Work. Unless otherwise agreed to by the Engineer, no single activity in any schedule shall be allowed to represent more than fifty thousand dollars (\$50,000) of the total scope of the Work. The initial schedule and monthly schedule updates shall be considered payable activities and appropriate payment amounts shall be included in the Schedule of Values or the Bid Schedule. Failure to provide adequate schedules shall result in non-payment in accordance with the amounts established in the Schedule of Values or the Bid Schedule.

#### **Article 5.4 Non-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. Contractor shall not be reimbursed for Work performed in violation of this Article unless the Work is in direct response to an Emergency and approved after-the-fact by the Engineer.

The Contractor shall reimburse the Owner labor, overtime, and all other costs for inspection Work performed on Sundays, recognized holidays, and for any Work in excess of a standard work day (excluding meal times) except when the Work is required by a permit issued by an agency after the Contract has been executed, or unless the Work period is designated by the Owner.

#### **Article 5.5 Shop Drawings**

The Contractor shall submit to the Engineer for review six (6) copies of those Shop Drawings required by the Contract Documents within a reasonable time and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor. A properly completed Submittal Transmittal form shall accompany all submittals. If a substitution is being requested, a Substitution Request form shall be submitted with the appropriate backup documentation.

The Shop Drawings submitted by the Contractor shall bear his specific written and signed certification that he has verified: (1) that the Work shown is in conformance with the Contract Documents; (2) that he has determined and verified quantities, dimensions, field measurements, and related field construction criteria; and (3) that he 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 shall be returned to the Contractor for further action, and resubmittal.

Within a reasonable time, the Engineer shall review and approve or take other appropriate action on the submittals, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

The Engineer shall state the reasons for rejection and/or resubmittal requirements if applicable.

Revisions on re-submittals other than those requested by the Engineer on previous submittals shall be specifically noted by the Contractor.

Upon approval of the Shop Drawings by the Engineer, two (2) copies shall be returned to the Contractor. If the Contractor requires more than two (2) copies, the Contractor shall submit such additional copies.

The Engineer's approval of Shop Drawings does not relieve the Contractor of responsibility for any deviation from the Contract Documents unless the Contractor has submitted and received written approval of the Deviation Request. Errors and omissions that may occur in the Shop Drawings are the responsibility of the Contractor. The Contractor is not relieved of this responsibility by the Engineer's approval of the Shop Drawings.

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.

## **Article 5.6 Product Data**

The Contractor shall submit for approval six (6) copies 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 within a reasonable time and in such sequence as to not cause a delay in the Work, in the Work of the Owner, or any separate Contractor. A properly completed Submittal Transmittal form shall accompany all submittals. If a substitution is being requested, a Substitution Request form shall be submitted with the appropriate backup documentation.

Within a reasonable time, the Engineer shall review and approve or take other action on the submittals. Approval by the Engineer is required before any of the equipment is ordered.

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 notified the Engineer in writing of such deviations at the time of submission and secured the Engineer's written approval. The Contractor shall not be relieved 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. The Contractor shall ensure that items to be furnished fit the space available as shown in the Contract Documents.

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 through the Substitution Request process by the Engineer in writing 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, UNLESS the listing(s) specifically state "No Substitutions." In such event, no substitutions shall be accepted.

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 in writing 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. A properly completed Submittal Transmittal form shall accompany all submittals. If a substitution is being requested, a Substitution Request form shall be submitted with the appropriate backup documentation. 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.

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 shall 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 but no later than the Preconstruction Conference, name the Superintendent, the Safety Supervisor required by Section 10.06, Article 6.8 – Safety, 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 name and twenty-four (24) hour phone numbers of two persons that may legally act on behalf of the Contractor in case of emergency at any time shall also be provided.

The Superintendent is the Contractor's representative at the site and has authority to act on Contractor's behalf. All communications given to the Superintendent are as binding as if given to Contractor. A qualified Superintendent is one who is completely familiar with the requirements of the Contract Documents, has experience and ability to direct all Work at the site, is able to speak and communicate effectively using English, and is present at the job site, or readily available at all times while Work is in progress.

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, at no additional cost to the Owner, 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:

1. All Subcontractors proposed for the Work shall be acceptable to the Owner.
2. 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 shall be taken by the Contractor for cancellation of such subcontract and new Subcontractor, acceptable to the Owner, shall be provided at no additional cost to the Owner. Subletting by Subcontractors shall be subject to the above.
3. The Contractor shall be fully responsible to the Owner for the acts, errors, and/or 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.

4. The subcontracting of any of the Work to be done shall 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**

Contractor expressly understands that the City has the right to do Work and may award other Contracts in connection with the Work under the Contract or nearby projects. Contractor shall conduct his operations so as to interfere as little as possible with other contractors or subcontractors 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 properly barricade all trench excavations with appropriate signs and warning lights placed to prevent inadvertent entry by vehicular or pedestrian traffic.

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 signage 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, the Contractor shall provide continuous pumping to maintain the excavation in a dewatered condition.

The Contractor shall maintain all roadways in a drivable condition for normal vehicular and transport operations, including emergency vehicles, 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 Duties of Inspectors**

Inspectors shall 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 are not authorized to alter or waive the provisions of the Contract. Inspectors are not authorized to issue instructions contrary to the Contract Documents or to act as foreman for the Contractor.

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

As the Engineer's authorized representative, the inspector may reject damaged or other unsuitable materials and direct their replacement in accordance with the Contract Documents. With prior approval of the Engineer, the inspector may issue temporary

Work Suspension Orders due to (1) weather conditions; (2) the Contractor's refusal to carry out the orders or directives of the Engineer or his Authorized Representative; or (3) the Contractor's refusal to perform in accordance with the Contract Documents.

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 5.14 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 being performed 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 5.15 Work Limits, Easements, and Rights-of-Way**

The Owner shall provide work limits, rights-of-way, and easements for the Work. Information regarding the width and status of the 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 under the Contract, the Contractor shall ensure that all permits necessary for the construction of the project, including right of entry for driveway reconstruction, have been obtained and shall ensure that they are available on the job site at all times.

The Contractor shall 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 shall not hold the City, its employees, agents or consultants liable for use of or damage to this property.



### **Article 5.16 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 5.17 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 shall 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 5.18 Changed Conditions**

The Contractor shall notify the Engineer in writing, no later than two (2) working days and before such conditions are disturbed, of: (1) subsurface conditions at the site differing materially from those indicated in the 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 the Contract. The Engineer shall promptly investigate the allegations. If the Engineer finds that such conditions do materially alter the Contract requirements so as to cause an increase or decrease in the Contractor's cost of, or the time required for, performance of the Contract, the Engineer may request that the Contractor submit the documentation required under Article 5.21 - Claims for Additional Compensation.

No claim of the Contractor under this clause shall be allowed unless the Contractor has given written notice as required. However, the time prescribed in this Article may be extended for good cause by 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 within three (3) days of receipt of written notice, the Owner may 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 which may or may not require 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 in excess of \$30,000.00~~15,000.00~~, or cumulative changes in the Work, which will cause the total value of the Contract to exceed 110% of the original requires City Council approval.

The Owner shall pay for additions to the Work or take credit for reductions to the Work using one of the four methods described below and as specified in Section 10.07, Article 7.4 – Change Order Compensation Adjustments:

1. Negotiated unit or lump sum prices;
2. Contract unit or lump sum prices (if they have been included as a part of the Contract);
3. Time and Material prices (when the Engineer determines that Contract prices or negotiated prices do not apply); or
4. No cost changes (when the Engineer determines that a change is necessary which does not affect the price or time for the Work).

Prior to the Engineer authorizing payment for changed Work, the Contractor shall furnish a Change Order Proposal that is itemized as required by the Engineer for both additions and deletions to the Work.

All Contractor-initiated requests for deviation from the requirements of the Contract Documents shall be accomplished by the submittal of a completed Deviation Request Form and a Contractor's Change Order Proposal. Unless otherwise specified in the Engineer's approval of a Deviation Request, and formalized by an executed Change Order, any and all increased costs or delays resulting directly or indirectly from the deviation shall be borne solely by the Contractor.

The Contractor's Change Order Proposal 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. The Contractor agrees that it will incorporate the provisions of this Article into all agreements with lower tier subcontractors.

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 and Contract time adjustments for the Work or alteration plus all payment for the interruption of schedules, extended overhead, delay or any other impact claim or consequential effects created by the Work or alteration defined in the Change Order, and by such signing specifically waives any reservation or claim for additional compensation in respect to the subject of the Change Order.

If the Contractor's Change Order Proposal includes a request for a time extension, a justification thereof shall also be furnished. The Change Order 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 may, subject to the written approval of the Purchasing Agent, execute a Unilateral Change Order if:

1. the Engineer determines that adjustment in compensation or time is due either the Contractor or the Owner;
2. negotiations fail to reach mutual agreement on the magnitude of adjustment; and
3. the revised Work is such that, in the opinion of the Engineer, it could not be reasonably conducted at a time or in a manner that would permit determining its value on a Time and Material basis under Section 10.07, Article 7.4, SubArticle B – Time and Material Changes.

A Unilateral Change Order shall have the same force and effect as a mutually executed Change Order, except that the Contractor shall not have waived his rights to pursue additional compensation as a separate claim. A Unilateral Change Order shall incorporate such Contract adjustment as the Engineer may determine, which may not necessarily be the last offer made during negotiations. The incorporation of the Work by Unilateral Change Order shall in no way diminish the Contractor's responsibility to complete the revised Work in an efficient, timely manner as otherwise required by the Contract Documents.

#### **Article 5.21 Claims for Additional Compensation**

Except where restricted in the Contract Documents, the Contractor may make a claim for additional compensation when he believes that he has incurred additional costs due to the acts, errors, or omissions of the Owner or by reason of changed conditions. 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 notify 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 shall 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 shall specifically include the following:

1. the facts and circumstances surrounding the claim and the Contract provisions under which the claim is made;
2. 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, Drawing notes or other Contract provisions;
3. a clear certification that the Contractor's Bid Costs were in fact based on the stated original interpretation;
4. 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;
5. a narrative description of the increase in the Scope-of-Work resulting from the revision in the requirements;
6. the Pay Items and quantities affected by the alleged change;
7. references to previous notices of pending claim; and
8. 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 (1) the labor classifications, rates and additional time; (2) the equipment descriptions, rates and additional time; (3) material descriptions, unit prices and quantities; and (4) appropriate supporting documentation as to materials, unit prices, labor rates and equipment rates. The permitted rates and allowances shall be as provided under Article 5.20 - Changes in the Work.

Claims presented that do not include the above information or otherwise considered to be incomplete will be returned to the Contractor without review by the Engineer. Within sixty (60) days after receipt of the Contractor's properly submitted and complete claim, the Engineer shall render a Final Determination as to the merit of the claim and, if any are justified, the amount of additional compensation and time due. Any change in the

Contract sum or allowable time resulting from such claim shall be authorized only by the execution of a proper Change Order.

#### **Article 5.22 Time for Completion of Work**

The Owner shall indicate in the Special Provisions 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 authorized night shifts, overtime operations, and Saturdays, Sundays, and holidays as may be necessary to insure the completion of the Work within the time specified.

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 control and without fault or negligence on his 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.

No extension of time or changes to bid unit prices shall be granted due to the Contractor's failure to properly plan for and deliver bid items that require a long lead-time. The timely delivery of schedule-critical items is crucial and the Contractor shall include in his bid unit price the cost (if any) of expedited delivery to assure that construction can be completed within the time of completion specified in the Contract.

#### **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 a written order from the Engineer or Owner. 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 the 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 a written 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.

In the event that a suspension of Work is ordered in writing by the Engineer due to adverse weather or unforeseen conditions, and, in the opinion of the Engineer, the Contractor has prosecuted the Work with due diligence prior to the time of suspension, the Contractor may be due an extension of time, but not additional compensation.

Where the Contract provides for a time period for completion and the Work is suspended for the convenience of the Owner or adverse weather or unforeseen 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 a Notice to Resume Work is issued by the Engineer.

#### **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.

Any time during the Work that cleanup, in the opinion of the Engineer, is not keeping pace with the rest of the Work, 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 shall be the sole responsibility of the Contractor and the Owner shall not be held liable for this additional expense.

All contours, roadway surfaces, drainage courses, street name signs, traffic control signs, mailboxes, newspaper boxes, property corner markers, survey markers, survey monuments, utility markers, existing vegetation, shrubbery, lawns, trees, fences, rockeries, landscaping, sidewalks, driveways, and other improvements, removed to facilitate or damaged by the Contractor's operations shall be fully restored to original condition at their original location by the Contractor unless otherwise required by the Contract Documents or directed by the Engineer. 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, through his own comprehensive inspection, has concluded that all Work is completed, all code compliance inspections have been performed, and all other Contract requirements have been fulfilled; he shall notify the Engineer in writing of completion and request a pre-final inspection of the Project. The pre-final inspection shall be performed in the presence of a representative of the Owner, the Engineer, and the Contractor. The Contractor shall make available copies of all required code compliance inspection reports at this inspection. All deficiencies indicated by the pre-final inspection shall 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 reveals uncorrected listed deficiencies, the above outlined procedure shall be repeated and the cost of reinspection shall be deducted from any money due the Contractor. This cost shall include, but is not limited to, salaries, administrative, and transportation costs.

The Final Acceptance Date shall be the date upon which the Final Inspection has been accepted and the Engineer has received and approved, as applicable, the following submittals:

- A. Red-lined or Record Drawings;
- B. Survey Field Books;
- C. O&M Manuals as appropriate;
- D. Video as appropriate; and
- E. Other contractually required documents as noted in the Contract; and

The Engineer shall provide the Contractor a letter specifying the Final Acceptance Date, pertinent warranty information, and applicable information about the landscaping Plant Establishment Period.

## **Article 5.27 Liquidated Damages**

The Owner may withhold from any progress payment the sum per day identified in the Special Provisions as Liquidated Damages for each and every calendar day that the Substantial Completion Date is delayed beyond the Contract Completion Date. After substantial completion, the Owner may withhold out of any progress payment the sum per day identified in the Special Provisions as Liquidated Damages for each and every calendar day that the Final Acceptance Date is delayed beyond the Contract Completion Date. If no money is due Contractor, the Owner shall have the right to recover said sums from 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, shall in no way operate as a waiver on the part of the Owner of any of its rights, including liquidated damages, 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, 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 foregoing, the Owner may immediately terminate the 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 – Suspension of Work. 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 after demand of the Owner, 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 reprocurement costs, incurred in accomplishment of the Work.

In the event 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 shall 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 Owners Convenience**

At any time during the term of the 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 accomplished by delivery of a Notice of Termination to the Contractor, specifying (1) that the termination is for the convenience of the Owner; (2) the extent to which performance of the Work under the Contract is terminated; and (3) the date upon which such termination becomes effective.

Except as otherwise directed by the Owner, after receipt of a Notice of Termination, 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 shall be paid for at the Contract unit bid price. Payment for materials included in the material inventory described in #5 above shall be paid at actual cost delivered to the project or storage site, including transportation

charges. Allowable total markup on the actual cost shall not exceed 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 Article 5.21 - Claims for Additional Compensation. In no event, however, shall loss of anticipated profits be considered as part of any claim and/or 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 accomplishing routine maintenance operations during this use and for any damage caused to the Work by those operations.

### **Article 5.31 Winter Suspension**

Unless otherwise specified in the Special Provisions, the Engineer may suspend the Work when adverse winter weather conditions make it impractical to secure the desired results. Where the Work is suspended for adverse winter weather conditions, the Contractor shall not be entitled to additional compensation.

Winter Suspensions generally occur on October 15 of each construction season. Although this date may vary from year to year, the Contractor should plan his Work in anticipation of a Winter Suspension occurring at or about this time each year. The Contractor shall schedule and sequence all operations such that the condition of the Work meets Suitable Conditions for Winter Maintenance, as described in this Article under SubArticle C below, to provide for routine maintenance by the Owner during the Winter Suspension period.

If the Work area is judged by the Owner to not meet Suitable Conditions to provide for routine maintenance during the Winter Suspension period, the Contractor shall be responsible for all costs necessary to establish Suitable Conditions for Winter Maintenance, including costs incurred by the Owner to prepare the site to meet Suitable Conditions and/or the payment of Excess Maintenance Costs as described in SubArticle B below.

#### **A. Coordination with the Owner**

The Contractor shall meet with the Engineer no later than September 15th to outline the Work to be completed before Winter Suspension. At the meeting, the Contractor shall provide a written Winter Suspension 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. The Winter Suspension Plan shall be prepared to achieve Suitable Conditions for Winter Maintenance, as described in SubArticle C below.

Before Winter Suspension, the Contractor shall, at his own expense, do all Work necessary to establish Suitable Conditions for Winter Maintenance in accordance with the Contractor's Winter Suspension Plan. The Contractor shall then schedule a field review for acceptance by the Engineer. Within two (2) days following the field review, the Engineer shall prepare a punch list of deficiencies the Contractor is required to correct prior to acceptance of Suitable Conditions for Winter Maintenance. The Contractor shall correct all items on the punch list to the satisfaction of the Engineer by the date shown on the punch list. During this period, the Contractor may continue to perform Work, as long as it is performed in such a manner that it does not compromise the Contractor's ability to achieve Suitable Conditions for Winter Maintenance.

If the Contractor meets all the coordination requirements described herein, the Engineer shall issue a Notice of Acceptance for Winter Maintenance by the Owner. If the Contractor fails to satisfy all the coordination requirements described herein, the Owner may impose any and all Remedies for Failure to Comply, as described in SubArticle B below.

If unusual weather, scheduling constraints, or other unforeseen conditions make it difficult to initiate or continue the Work in distinct areas within the project limits, the Contractor may be entitled to a time extension to the Contract Completion Date if:

1. The Contractor notifies the Owner, prior to September 15, of the issues affecting the Contractor's ability to perform the Work; or
2. The Contractor establishes that initiating or continuing the Work will result in conditions not suitable for winter maintenance by the Owner; or
3. The Contractor specifically identifies those distinct areas where the Work cannot be continued or initiated because it will result in conditions not suitable for winter maintenance by the Owner.

If the Owner agrees that a time extension to the Contract Completion Date is warranted, the Owner shall issue a Change Order acknowledging the revised Contract Completion Date. However, the Contractor shall not be entitled to additional compensation as a result of the issuance of such a time extension.

#### B. Remedies for Failure to Comply

The Engineer may apply any, some, or all of the remedies identified in this SubArticle if (1) the Contractor has not presented a written Winter Suspension Plan prior to September 20<sup>th</sup>; (2) 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; (3) the Contractor fails to correct punch list items for Winter Suspension; or (4) for any reason the Work is found to be unsuitable for maintenance by the Owner during the Winter Suspension period.

Remedies the Engineer may utilize include the following:

1. Direct the Contractor to complete the Work required to meet Suitable Conditions for Winter Maintenance at the Contractor's expense.
2. Using the forces of the Owner or a separate contractor, complete the Work required to meet Suitable Conditions for Winter Maintenance. Costs incurred by the Owner due to the Contractor's failure to obtain a Notice of Acceptance for Winter Maintenance from the Owner shall be borne by the Contractor, including but not necessarily limited to Work required of the Owner's forces, the cost of separate contractors retained by the Owner, and/or any claims made against the Owner by the abutting property owners or the public.
3. If the Contractor fails to prepare the Work to meet Suitable Conditions for Winter Maintenance, and the Owner is unable to correct the Contractor's Work to achieve Suitable Conditions for Winter Maintenance, the Excess Maintenance Costs incurred by the Owner above and beyond those costs reasonably necessary to maintain the road had it been prepared to meet Suitable Conditions for Winter Maintenance shall be borne by the Contractor. Excess Maintenance Costs shall be determined by the Owner and submitted to the Contractor at the end of the winter maintenance period.

If the Engineer determines it is in the best interest of the Owner, the abutting property owners, or the public, he may also apply any of these remedies to specific elements or distinct areas of the Work while applying other remedies to other elements or distinct areas of the Work. If, in the opinion of the Engineer, it is in the best interest of the City to delete portions of the Suitable Conditions for Winter Maintenance, the Engineer may issue written notice to the Contractor.

#### C. Suitable Conditions for Winter Maintenance

Suitable Conditions for Winter Maintenance shall be determined by the Engineer and shall include the following:

1. Travel ways that are to be paved in their final condition as a part of the Contract shall be paved as follows:
  - a. Final pavement as shown on the Drawings, or
  - b. The bottom layer of pavement shown on the Drawings; placed according to the Contract Documents at the design thickness of the

layer. (In the event the layer is less than one and one-half inches (1.5") thick, the Engineer may require the thickness be increased.); or

- c. Temporary AC Pavement (Class E), typically twenty-four feet (24') wide, two inches (2") in thickness, along the project centerline in those areas designated by the Engineer. If Temporary AC Pavement is designated by the Engineer, the Contractor shall be paid for the installation by Change Order at fifty percent (50%) of the Contract unit rate for AC Pavement.
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 as follows:
    - a. Final curb & gutter, valley gutter or pavement as shown on the Drawings; or
    - b. Temporary AC Pavement (Class E), two inches (2") in thickness, in those areas designated by the Engineer. If Temporary AC Pavement is designated by the Engineer, the Contractor shall be paid for the installation by change order at fifty percent (50%) of the Contract unit rate for AC Pavement.

For temporary drainage facilities to be deemed suitable, all collection points included in the project design shall be functional. Where Best Management Practices are in place for Erosion and Sediment Control, those features shall be made suitable for the winter to the satisfaction of the Engineer.

3. All obstacles to snow clearing, snow storage, and snow loading and hauling shall be removed or diminished to the satisfaction of the Engineer. The space required for snow clearing, storage, loading and hauling shall be as determined by the Engineer.
4. Illumination, traffic signals, and signage shall be in proper working order.
5. All existing roads affected by the Work shall be returned to full operation.
6. Contractor shall install a minimum of six inches (6") of cover for all utilities below the surface of the travel way during the Winter Suspension period. If subsequent adjustments to the utilities become necessary when the travel ways are completed at a later date, the cost of these subsequent adjustments shall be considered incidental to the Contract.
7. Temporary or permanent backfill must be installed behind all curbs and medians to eliminate tripping hazards during the Winter Suspension period.

Installation of Temporary AC Pavement shall not be a basis for any time extension or additional costs, other than the actual cost to install the Temporary AC Pavement as described above.

D. Owner and Contractor Responsibilities During the Winter Maintenance Period

The Owner shall perform the routine winter maintenance operations specified below during the Winter Suspension Period. Routine winter maintenance shall include and is limited 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 Contractor shall remain responsible for all other elements of the Work, including those described by Section 10.04, Article 4.15 – Temporary Erosion Control and Storm Water Pollution Prevention Plans for Construction, throughout the Winter Suspension period.

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

**Article 5.32 Pre-Construction Conference**

Prior to the start of Work and within five (5) working days after delivery of the executed Contract by the Owner to the Contractor, the Owner shall hold a Pre-Construction Conference to (1) review the Contractor's schedules and Drawings; (2) establish procedures for handling shop drawings and other submissions; (3) establish procedures for submitting and processing applications for payment; and (4) address any other general housekeeping issues as necessary. Contractor and his Superintendent and Subcontractors shall attend the conference to meet with the Owner or his Representative, Engineer, and Inspector.

**Article 5.33 Use of Explosives**

Unless specifically authorized in the Special Provisions, the use of explosives is prohibited.

## **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(s), or his employees.

### **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. Owner shall not use electronic facsimile transmissions to serve notice to Contractor.

### **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. Contractor shall not use electronic facsimile transmissions to serve notice to the Owner.

### **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 which are required by any federal, state or local governmental agency or any public utility and not provided by Owner 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.

The Contractor shall 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 shall obtain the required permits and authorizations for Work within the State of Alaska Railroad 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 Work 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. Suspension of Work based on the forgoing shall not be subject to Section 10.05, Articles 5.21 – Claims for Additional Compensation or 5.24 – Suspension of Work for a basis of a claim by the Contractor

The payment of basic and special fees for City of Petersburg permits and which are applicable to the project, shall not be the responsibility of the Contractor. These fees shall not be considered a bid item, nor shall they be considered incidental to any bid item.

The Contractor shall obtain permits and fulfill all other requirements of C.P.S.S., the City Code, the Building Official, and the City Engineer.

The Contractor shall obtain and pay for all permits, deposits and connection fees for tapping any required water and/or wastewater service connection for new and disrupted service connections.

Where sanitary sewer is available, the Contractor may apply for a dewatering permit from the City for dewatering discharge to the sanitary sewer. Contractor shall comply with Division 20, Section 20.12 – Dewatering for dewatering activities.

## **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 shall 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 in other parts of the Contract Documents. Where any of the aforementioned safety provisions, laws, ordinances, and/or Contract Document requirements is 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 the 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 and/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, including his employees and agents, 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**

As a prerequisite to execution of the Contract, 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 Purchasing Agent as verification of insurance a certificate of insurance on the forms furnished or otherwise approved form, showing the type and amounts of insurance, the policy number, and expiration date. The certificate must be signed by an authorized representative of the insurance company. Each certificate of insurance shall state that the insurance company will provide not less than twenty (20) days written notice to the Engineer and the Risk Manager of the City of any material change, cancellation, or non-renewal of the insurance policies. All General Liability and Automobile Liability insurance policies required under this Article shall name

the City as an additional insured for the purposes of this Project and shall contain a waiver of subrogation against the City.

The Contractor shall provide the following types of insurance:

<u>Workers' Compensation</u>	<u>Minimum Limits</u>
\$500,000 Employer's Liability and Worker's Compensation as required by Alaska State Workers Compensation Statutes.	\$500,000
<u>Commercial General Liability</u>	<u>Minimum Limits</u>
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
<u>Commercial Automobile Liability</u>	<u>Minimum Limits</u>
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	Statutory
Federal Maritime Liability Law (Jones Act)	\$1,000,000
Builder's Risk	Total Contract Amount

#### NOTICE TO "OUT OF STATE" CONTRACTORS

A Certificate of Insurance for Alaska Worker's Compensation, or an "other states" endorsement on Contractor's 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 is (1) 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) 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, 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 shall be disbursed pursuant to Section 10.07 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, as required and at such frequency as required by the State of Alaska. The Contractor shall provide copies of all certified payrolls to the City, concurrent with State of Alaska submissions.

#### **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 First Judicial District in Juneau, 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**

Where applicable, the Contractor shall comply with the provisions of AS 36.10 requiring employment preference for Alaska residents.

#### **Article 6.15 State of Alaska Prevailing Wage Scale**

Where applicable, the Contractor shall comply with AS 36.5 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 state and federal wage decisions. Additionally, the Contractor and all Subcontractors shall be responsible for providing certified payrolls to both the City, 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 on any basis prohibited by law. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to any attribute protected by law. 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 their rights with regard to employment discrimination.

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 any attribute protected by law.

The Contractor shall comply with any and all reporting requirements which the City of Petersburg may establish by regulation.

The Contractor shall include the provisions of this Article in every subcontract or purchase order under the Contract, so as to be binding upon every such Subcontractor or vendor of the Contractor under the 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 the 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 of Petersburg under the 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 Bidding Documents.

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 local code.
6. Sequential ticket number, date, time of weight, pay item in words, and project location.
7. Bid Schedule and Number of Item
8. Pit location and name of scale operator.

The Owner shall not be required to 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 in the City, 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 (7) items. In addition, the scale operator shall 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 AS 45.75.050(d).

## **Article 7.2 Scope of Payment**

The Contractor shall accept the compensation as set forth in the Contract Documents 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 shall 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 Contract Documents, but is not identified as being directly incident or incidental to the completion of any Contract item, 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 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, shall be considered for such advance payments by the Owner.

No payment shall be made on any single class of material valued at less than \$5,000. No advance payment 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 shall 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 is requesting advances, insurance to assure replacement if lost, stolen or damaged, and other information the Engineer may request.

#### **Article 7.4 Change Order Compensation Adjustments**

Each Change Order Proposal shall include a clear summary of the Contract requirements; the reason for the requested change; a description of the change and whether additional time and/or other compensation is requested or credit offered to the Owner. Unless formalized by an executed Change Order, any and all increased costs or delays resulting directly or indirectly from an unapproved Change Order Proposal shall 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 with respect to the subject of the Change Order.

##### **A. Negotiated Changes**

When extra Work is ordered by the Engineer to be performed on a negotiated unit or lump sum basis, the Contractor shall be required to submit a properly itemized Change Order Proposal covering all the additional Work and/or Work to be deleted. The proposal shall be itemized for the various components of Work and segregated by labor, material, and equipment costs in a format satisfactory to the Engineer. Each proposal shall include similar itemized costs for all subcontractors, regardless of tier. The labor, material and equipment components of each proposal shall include the following:

##### **1. Labor**

Labor costs shall include 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 labor costs shall include only those direct labor hours required to perform the changed Work for workers and working foremen. Supervision above the level of working foremen (such as general foremen, superintendents, and project managers, etc.) shall not be included in labor costs and shall be considered to be included in the Overhead and Profit Markup as described hereafter in this Article.

##### **2. Materials**



Costs for materials and supplies, including freight, shall be based on the net actual cost of the material and supplies required to perform the changed Work, as verified by appropriate vendor and third party invoices. Material costs shall reflect cost reductions available to the Contractor due to trade discounts, volume rebates, and price reductions for prompt payments, if applicable. Material costs must be itemized to display the unit price for each specific item incorporated into the Work

### 3. Equipment Rentals

Time for both owned and rented equipment shall be estimated to the nearest one-quarter 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 below shall be full compensation for providing the required equipment and no additional compensation shall 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 shall not be allowed.

When it is necessary to obtain equipment from sources beyond the project limits at the request of Owner exclusively for changed Work, the actual cost of transferring the equipment to the site of the Work and return shall be allowed as an additional item of expense. Where the move is made by common carrier, the move-in allowance shall be limited to the amount of the freight bill or invoice. If the Contractor hauls the equipment with his own forces, the allowance shall 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 changed Work which is subsequently retained on the project and utilized for completion of Contract items.

#### a. Contractor Owned Equipment (over \$500)

For any Contractor-owned machinery or special equipment, the Contractor shall include costs for 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 Dataquest, Inc. These rates do not apply to equipment or tools valued at less than five hundred dollars (\$500). Hourly rental rates shall be determined as follows:

1. The established hourly rental rate shall be equal to the monthly rate for the basic equipment plus the monthly rate for applicable attachments as set forth in the "Blue Book", necessary to

perform the Work, both divided by 176, all multiplied by the area adjustment factor, plus the estimated hourly operating costs listed in the Blue Book.

2. The area adjustment factors shall be applied to those sections in the "Blue Book" containing an area adjustment map.
3. The "Equipment Life" adjustment factor sections shall not apply.

For Contractor-owned equipment not listed in the "Blue Book", the Contractor shall receive a rental rate as agreed in writing between the parties before the changed Work is begun. If agreement cannot be reached, the Engineer reserves the right to establish a rate based on similar equipment shown in the "Blue Book" or based on prevailing commercial rates in the area.

b. Rented Equipment (over \$500)

Costs for equipment brought to the Work site and rented or leased specifically for Work required under this Section shall be included at the actual rental rate and supported by invoices from the equipment vendor. Rental rates for equipment shall be consistent with prevailing rates for similar equipment in the area.

Costs for rented equipment previously on the site and utilized specifically for changed Work shall be included at the actual rental rate and supported by invoices from the equipment vendor, provided the hourly rate for this equipment shall not be greater than the hourly rate paid for that same equipment for other Work in the Contract.

c. Equipment less than \$500

Equipment, tools, and other specialty items valued at less than \$500 are included in Profit and Overhead and no separate payment shall be made.

4. Allowances for Profit and Overhead

Contractor Change Order Proposals for the performance of changed Work shall include all direct costs for labor and materials as described above. The Engineer shall review the proposals for reasonableness and adequate detail in order to reach agreement with the Contractor before including allowances as described below:

- a. In addition to the direct costs of labor, materials and equipment incurred by the Contractor, the Contractor shall be entitled to an

allowance for profit and overhead. This allowance shall not exceed twenty percent (20%) of the total direct cost of labor and materials.

- b. If Work is performed by a subcontractor, the subcontractor actually performing the Work shall be entitled to those allowances for profit and overhead listed above, and each subsequent higher tiered subcontractor or Contractor shall be allowed up to an additional ten percent (10%) markup on the subcontractor's direct costs, up to a maximum of two tiers of subcontractors.

The allowance made in accordance with the terms outlined above shall be complete reimbursement and compensation for all indirect costs associated with changed Work including, but not limited to, job office overhead, home office overhead, project management, superintendents, general foremen, estimating, engineering, detailing, legal, accounting, shop drawings, costs of small tools and small equipment, bond cost, insurance premiums, profits, delay 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 shall be made for changed Work.

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

#### B. Time and Material Changes

When extra Work is ordered by the Engineer to be performed on a time and materials basis, the Contractor shall be required to perform the extra Work at the actual direct cost for labor, materials and equipment plus allowances for profit and overhead as described under the Negotiated Changes clause of this Article. The amount of the allowance for profit and overhead for Time and Materials changes shall not exceed fifteen percent (15%). In order for payment to occur, the Contractor must document all direct costs in a manner acceptable to the Engineer. The Contractor shall provide daily time sheets with the names of all Contractors employees working on the changed Work, the number of hours each employee works on the changed Work, and a description of the Work performed. In addition, the Contractor shall provide daily records of all equipment used to perform the changed Work showing the number of hours each piece of equipment was used, a description of the Work performed, and the name of the equipment operator. All materials incorporated into the changed Work shall be documented with itemized invoices from vendors and suppliers.

### C. Unit Price Changes

When extra Work is ordered by the Engineer to be performed on a unit price basis, payment shall be made for both added quantities and deductive quantities in accordance with those unit prices that have been incorporated into the Contract Documents, unless the Engineer determines there is an alternate method. For changed Work authorized by the Engineer, the Contractor shall submit a Change Order Proposal itemizing the quantities of each item of Work for which there is an applicable unit price. The applicable unit prices shall be applied to the net differences of all quantities of the same item. These unit prices shall be considered to cover all direct and indirect costs of furnishing and installing the item, including all profit and overhead. No additional markup for overhead and profit shall be allowed on unit priced items except where the actual quantity used exceeds one hundred and twenty-five percent (125%) of the estimated quantity. For additional unit price Work performed by subcontractors, each subsequent higher tiered subcontractor or Contractor shall be allowed up to an additional five percent (5%) markup on the subcontractor's direct costs (not including profit and overhead), up to a maximum of two tiers of subcontractors.

### D. No Cost Changes

The Engineer shall have authority to order changes in the Work that, at his sole discretion, 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, it 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.

## **Article 7.5 Progress Payments**

The Contractor shall submit to the Engineer an Application for Payment, on the forms furnished, supported by such data as the Engineer may require substantiating the Contractor's right to payment for Work done during the preceding calendar month. The Engineer shall, within eight (8) 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 received by the Owner within two (2) days after execution by the Contractor. The Owner shall process Partial Payment Estimates and make payment to the Contractor within fifteen (15) days of receipt of the Partial Payment Estimate. If the Owner fails to make payment to the Contractor within thirty (30) days of receipt of the Application for Payment (twenty-one (21) days if the project is funded with State of Alaska grants), the Contractor may, upon seven (7) 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 Engineer may require a schedule of values, or cost breakdown for any lump sum payment Contract item.

For projects where a Performance and Payment Bond is required under Section 10.03, Article 3.5 – Bonds, Insurance, EEO and DBE/WBE Forms, progress payments at one hundred percent (100%) of the estimated value of the Work accomplished, less all previous payments or for authorized withholdings as specified below, shall be made to the Contractor and no deductions shall be made, except as provided under the withholding provisions of this Article.

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

**Withholding:** The Engineer may withhold funds from a progress payment for any of the following reasons:

1. Defective Work;
2. Claims made directly against the City alleging an act or omission on the part of the Contractor, his employees, his agents, or Subcontractors in connection with the Work;
3. Damage to the City;
4. Reimbursements for Work done by the Owner because of any failure by the Contractor or Subcontractor to carry out the Work in accordance with the Contract Documents;
5. Uncompleted incidental Work, not earning direct payment, including but not limited to testing, cleanup, updating of progress schedules, preparation of Record Documents and Operations and Maintenance Manuals.
6. Liquidated damages;
7. Claims by Subcontractors, suppliers, laborers, or the Alaska Department of Labor;
8. If the Contractor or his/her Subcontractor fails to file Equal Opportunity reports in a timely manner, monies shall be withheld in the amount of ten percent (10%) of the amount due the Contractor until such time as the reports have been properly filed.

The amount of any withholding for items one (1) through five (5) above 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 for items six (6) through eight (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 on any subsequent pay estimate. If the Contractor uses such estimates as a basis for making payment to Subcontractors, Contractor does so at his own risk and Contractor shall bear all loss that may result. All quantities shall be subject to review by the Engineer prior to approval for payment.

The making of any 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.

In addition to certified payroll submittals to the Alaska Department of Labor required under Section 10.06, Article 6.12 – Certified Payroll, Contractor shall attach certified payrolls to each request for payment or partial payment. Certified payrolls attached to Contractor's request for payment or partial payment shall cover all pay periods in Contractor's request for payment or partial payment.

#### **Article 7.6 Payment of Claimants**

By submitting a request for Final Payment, the Contractor acknowledges and certifies that all actual or potential claims or issues have been either resolved or withdrawn and that there are no such claims or issues outstanding.

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 to Owner the completed three-point statement form 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 shall 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 three-point 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 three-point statement form referenced above, the City may institute an interpleader action in Superior Court, First 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 Final Payment and the following submittals, as applicable, to the Engineer. No Final Payment shall be made until the Engineer has received and approved the following submittals:

- A. Alaska Department of Labor (DOL)-issued written notification of compliance with AS 36.05.045;
- B. Other contractually required documents as noted in the Contract; and
- C. 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 Acceptance Date**

Placement of the Project on Warranty shall not relieve the Contractor of his responsibility for paying all costs resulting from defects in materials or workmanship supplied under the terms of the 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 within a reasonable time. The Contractor shall initiate corrective action within five (5) days after written notification from the Owner or the Owner shall make other provisions to complete the Work and all costs shall be paid by the Contractor.

## **SECTION 10.08 FORMS**

### **Article 8.1 Current Forms**

The following forms are provided as reference.

### **Article 8.2 Submittal Transmittal**

The Submittal Transmittal form.

### **Article 8.3 Request for Information Form**

The Request for Information form.

### **Article 8.4 Substitution Request Form**

The Substitution Request form.

### **Article 8.5 Deviation Request Form**

The Deviation Request form.









