



City of Homer

Standard Construction Specifications

2011 Edition

CITY OF HOMER
STANDARD CONSTRUCTION SPECIFICATIONS

2011 Edition

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GENERAL PROVISIONS
DEFINITIONS

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SECTION 10.01 **DEFINITIONS**

In these specifications and the contract, the following words or expressions shall be understood to have the meaning given below:

AASHTO	-	American Association of State Highway & Transportation Officials
ACI	-	American Concrete Institute
ANSI	-	American National Standard Institute
API	-	American Petroleum Institute
APWA	-	American Public Works Association
ASA	-	American Standard Association
ASME	-	American Society of Mechanical Engineers
ASTM	-	American Society for Testing & Materials
AWS	-	American Welding Society
AWWA	-	American Water Works Association
COHSCS	-	City of Homer Standard Construction Specifications
IEEE	-	Institute of Electrical & Electronics Engineers
ISO	-	Insurance Service Office
NEC	-	National Electrical Code
NEMA	-	National Electrical Manufacturer Association
NESC	-	National Electric Safety Code
OSHA	-	Occupational Safety and Health Act
UBC	-	Uniform Building Code

Act of God – “Act of God” shall mean an earthquake, flood, cyclone or other cataclysmic phenomenon of nature. A rain, windstorm, high water, or other natural phenomenon of unusual intensity for a specific locality, but which might reasonably have been anticipated from historical records of the general locality, shall not be construed as an “Act of God.”

Addenda (Addendum) - “Addenda” shall mean written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

Assembly – “Assembly” shall mean the Common Council of the City of Homer.

Bid – The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bidder – Any individual, firm, partnership, corporation, or combination thereof formally submitting a Bid for the work contemplated, or any portion thereof, acting directly or through an authorized representative.

Bidding Documents – The Invitation to Bid, Bid Guarantee, Provisions, Specifications, Forms, Schedules, Bidders 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.

Bonds - Performance and Payment bonds and other instruments of security.

Change Order – Any written agreement entered into between the Contractor and the Owner to supplement or clarify or alter the plans, specifications, or contract, or to otherwise provide for extra work, contingencies, alterations in plans, and other matters not contemplated by or adequately described in the plans and specifications.

City – Municipality of the City of Homer, Alaska.

Construction Schedule – “Construction Schedule” shall mean the time and activities plan for completion of the work prepared in the format required by the Contract Documents.

Contract – The written agreement executed by the City and the Contractor covering the performance of the work.

Contractor - The individual, firm or corporation undertaking the execution of the work under the terms of the contract and acting directly or through its agents or employees.

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

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

Contract Documents – The plans, specifications, agreements, performance and payment bond, including all agreed modifications thereof incorporated in the documents before their execution and all agreements of a supplemental nature that may be entered into during the progress of the work.

Date of Substantial Completion – For all construction contracts, the term “date of substantial completion of work” shall mean that date upon which the improvements which are the subject matter of the Contract, are accepted as essentially completed and available for Owner’s beneficial use for the purposes and in a manner intended by the Owner.

Days –

a. Calendar

Unless otherwise designated in the SPECIAL PROVISIONS, days as used in the Contract Documents will be understood to mean calendar days.

b. 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.

c. Non-Working

A non-working day is defined as Saturday, Sunday, a recognized holiday, a day on which the Contractor is specifically required by the Special Provisions to suspend construction operations, or a day on which a suspension order is in effect. Recognized holidays shall be: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day

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

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.

Design Engineer - Shall mean the Engineering Consultant under contract to the City to prepare the plans and specifications.

Engineer – Shall mean the City's designated representative.

Fair Cost Estimate – The Design Engineer's estimate as announced at the bid opening.

Final Acceptance Date – The date of final acceptance of the contract shall be defined as that date at which the project has been constructed, cleaned up, and all warranty periods have been completed in accordance with the Plans and Specifications and pursuant to *Article 5.13 – Final Inspection*.

It is mutually agreed between parties to the Contract that no payment by the Owner shall constitute an acceptance of unauthorized or defective work or improper material.

Projects may be accepted in respect to construction at such time as they are entirely completed; however, on projects consisting of several disconnected streets, sewer lines, or water lines, the Engineer may accept any of these separate sections if he so elects. Continuous sewer or water projects will not be accepted until completed in their entirety.

Force Account Work – Work performed by the Contractor at the 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.

Furnish – Purchase and deliver to the Project.

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

Install – Set in place and make usable.

Inspector – The authorized representative of the Engineer or City assigned to observe the work.

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

The liquidated damage amount shall only apply to damages and expenses the Owner may incur as a result of a delay in placing the facility (or material) in use and operation, exclusive of third party damages or claims.

Municipality – City of Homer, Alaska

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 establishes the time of commencement and date of completion.

“Or Equal” – Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and any material, article, or equipment of other manufacturers and vendors which will perform in an equal or better manner the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Engineer, of equal or better substance and function.

The burden of proof that an alternate material, article or piece of equipment is indeed equal, and the cost of the burden of proof, shall be borne by the proposer.

Owner – City of Homer, Alaska, acting through its legally constituted officials, officers, employees, or agents.

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.

Plans – The maps, plans, and drawings as listed and referred to in the “Contract Documents” together with any additional maps, plans, or drawings, and any supplemental drawings furnished by the Engineer.

Project Manager – The authorized representative of the City assigned to manage the contract administration and construction progress and quality control of the project. The terms Project Manager, Engineer, and City’s Representative may or may not be synonymous.

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

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

Special Provisions – That portion of the Specifications entitled SPECIAL PROVISIONS containing specific clauses setting forth conditions or requirements peculiar to the work and supplementary to the Standard Specifications.

Specifications – The directions, requirements, explanations, terms, and provisions pertaining to the various features of the work to be done, the manner and method of performance, and the manner and method of measurement and payment.

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

Subcontractor – Any individual, firm or corporation, partnership or joint venture acting for or on behalf of the Contractor in the performance of a part of the contract. This does not include those working for hire or suppliers of material or equipment except that production of materials or supplies at the project site shall be deemed as being produced by a subcontractor where such is not produced by the Contractor’s own forces and equipment.

Supplemental Specifications – Supplemental Specifications are those adopted subsequent to the Standard Specifications and generally involve alterations to standard specifications or the addition of a new construction item

Surety – The company or association which is legally bound to the Owner for the acceptable performance of the contract, and for payment of all the Contractor’s obligations arising out of the contract. Where applying to the “Proposal Guaranty,” it refers to the Company or Association which will forfeit the sum of the Guarantee if the Bidder fails to execute the Contract after the Bid is accepted by the City.

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.

Unit Price – “Unit Price” shall mean the amount bid by the Contractor for furnishing one unit of construction, the quantities being subject to adjustment within the limits specified in the Contract Documents.

Units of Construction –

a. Basic Unit of Construction

An elementary part of the total construction which includes like materials and labor, is repetitive in nature, and is readily and economically measurable, i.e., ‘cubic yard of concrete in place’, ‘linear foot of pipe installed’, or ‘pound of reinforcing steel furnished’.

b. Lump Sum Unit of Construction

A part of the total construction which combines various quantities of unlike materials, equipment, and labor into a separate piece of construction where the component materials, equipment, and labor are not in themselves readily and economically measurable, i.e., ‘Pumping station complete’, includes pumps, excavation, concrete, electrical work, backfill, etc.

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

Work – Work shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the project or the portion of the project involved and the carrying out of all the duties and obligations imposed by the contract.

Written Notice – A written communication delivered in person to the individual or to a member of a firm or to an officer of the corporation for whom it is intended, or if delivered or sent by mail to the last business address stated in the Contract Documents.

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SECTION 10.02 BID REQUIREMENTS AND CONDITIONS

Article 2.1 Examination of Plans, Specifications, Special Provisions, and Site Work

All bidders are required to be on record with the Homer City Clerk as owning a copy of the current edition of the City of Homer Standard Construction Specifications and the plans and specifications of the project being bid.

The Bidder is expected to examine carefully the site of the proposed work, the proposal, plans, specifications, and Contract Documents before submitting a bid. The submission of a Bid will 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 plans, specifications, special provisions, and term of the Contract. The failure or neglect of a Bidder to receive or examine any of the Bid Documents shall in no way relieve the Bidder from any obligations with respect to their Bid, or to the Contract. Misinterpretation or reputed lack of knowledge concerning the Bid will not serve as a basis for a claim for additional compensation.

The City will make available to prospective bidders, upon request and at the office of the Design Engineer, prior to Bid opening, any information that he may have as to subsurface conditions and surface topography at the work site. Investigations conducted by the Design Engineer of subsurface conditions were made for the purpose of study and design, and neither the City nor the Design engineer assumes any responsibility whatever in respect to the sufficiency or accuracy of borings, or of the logs of test borings, or of their investigations that have been made, or of the interpretations made thereof, and there is no warranty or guarantee, either expressed or implied, that the conditions indicated by such investigations are representative of those existing throughout the project, or any part thereof, or that unforeseen developments may not occur. No claim for additional compensation will be allowed which is based upon lack of knowledge of the project site and its improvements.

Logs of test borings or topographic maps showing a record of the data obtained by the Design Engineer's investigations of surface and subsurface conditions that are made available or bound herewith shall not be considered a part of the Contract Documents, said logs representing only the opinion of the Design Engineer as to the character of the materials encountered by him in his investigations, and is provided only for the convenience of the Bidders.

Information derived from inspection of logs of test borings, of topographic maps, or from drawings showing the location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the site and making such additional investigations as he may elect, or from properly fulfilling all the terms of the Contract Documents.

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, or 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 2.2 **Method for Clarifications**

Any Bidder in doubt as to the true meaning of any part of the plans, specifications, or other documents must submit to the City a written request for an interpretation thereof. The Bidder submitting the request will be responsible for its prompt delivery not less than seven (7) days prior to the date set for opening of Bids. Replies will be issued by Addenda mailed or delivered to all parties recorded by City as having received the Bidding Documents. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications are not binding.

Article 2.3 **Preparation of Bids**

a. Preparation and Submission

Preparation and submission of Bids shall be submitted on the forms contained in the Contract Documents. A completed Bid consists of two fully executed but separate parts:

PART A and PART B.

1. **PART A** consists of:
 - a) The Bid Form with the required price information
 - b) The Bid Bond
2. **PART B** consists of:
 - a) The Addenda Acknowledgement
 - b)* EEO-1 Certification

* Include this item if the Contractor or Subcontractor employs at least fifty employees and/or the Contract is for at least \$50,000.

PART A and PART B shall each be submitted in separate, opaque, sealed envelopes marked with the project title and name and address of the Bidder.

b. Form

The Bid will provide for a quotation of a price, or prices, for one or more items, which may be lump sum bids, alternate prices, scheduled items resulting in a Bid on a unit of construction or a combination thereof. All blank spaces in the Bid form shall be filled. A Bid Price shall be indicated for each item listed therein, or the words "No Bid", "No Charge", or other appropriate phrase shall be entered. Bids received without all such items completed will be considered non-responsive. If erasure or other changes appear on the forms, each such erasure or change must be initialed by the person signing the Bid.

Bid forms must be completed in ink or typewriter. The Bid price of each item on the form must be stated in words and numerals; in case of a conflict, words will take precedence. In case of discrepancy between unit price and totals, unit prices will prevail. The City reserves the right to waive any defects or irregularities under this subparagraph.

c. Alternate Bids

Alternate Bids will not be considered unless specifically requested.

d. Qualified Bids

Qualified Bids will not be allowed.

e. Acknowledge Addenda

Bid packet "B" shall contain an acknowledgement or receipt of Addenda.

Failure to include the acknowledgement of Addenda shall result in the Bid being rejected as non-responsive.

f. Bid Form Error

No consideration will be given by the City to a claim of error unless such claim is made to the City in writing within two (2) hours after the time of Bid Opening. Written notification shall consist of a letter delivered to the City Clerk supporting evidence of the error, within 24 hours after time of Bid Opening (excluding Saturday, Sunday and legal holiday), to allow consideration of the claim for error. Supporting evidence shall be original documents used to compute the Bids. The City shall be the sole judge of a claim of Bid Error.

Article 2.4 Bid Guarantee

Bids must be accompanied by a certified check, or cashier's check drawn on a bank in good standing, or a Bid Bond issued by a Surety authorized to issue such bonds in the State where the work is located in the amount of five percent (5%) of the total amount of the Bid submitted. This Bid Security shall be given as a guarantee that the Bidder will not withdraw his Bid for a period of thirty (30) days after the Bid Opening and if awarded the Contract, the successful Bidder will execute the attached Contract, and furnish a properly executed Performance and Payment Bond as specified in these instructions. The Bid Guarantee shall name the City of Homer as payee or beneficiary.

The Attorney-in-Fact (Resident Agent) who executes this bond on behalf of the Surety must attach a notarized copy of his power-of-attorney as evidence of his authority to bind the Surety on the date of execution of the bond.

Bids submitted without a Bid Bond will be considered non-responsive and will not be publicly read or considered.

Article 2.5 Bids to Remain Open

All Bids shall remain open for thirty (30) days after the day of the Bid Opening but the City may, at its sole discretion, release any Bid and return the Bid Security prior to that date.

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SECTION 10.03 AWARD AND EXECUTION OF CONTRACT

Article 3.1 Bidder Qualifications

Before the Bid is considered for award, the City will require the apparent low Bidder to submit the Contractor's Questionnaire. This document shall be submitted to the City Clerk within two (2) working days from the time of the Bid Opening. The Bidder's qualifications, which shall be listed upon the Contractor's Questionnaire, will include: a listing of Bidder's previous Contracts of a nature similar to that being bid upon; a listing of Bidder's staff to include managerial, and technical, who will be available for use in the execution of the Contract; and the listing of the projects to which Bidder is currently obligated or anticipates being obligated during the period of this Contract. The City may also require a current financial statement prepared by a certified public accountant.

The City shall also require that within two (2) working days after the time of Bid Opening, the apparent low bidder submit one of the following to the office of the City Clerk:

1. For Corporations:

Most recent copy of Articles of Incorporation, By-Laws **and** a current copy of a Resolution of its Board of Directors, granting the authority of the officer signing on behalf of the corporation.

2. For Co-partnership:

Most recent copy of the Partnership Agreement and a statement signed by all partners granting authority to the partner signing the Bid.

3. For Joint Venture:

A current copy of the Joint Venture Agreement and a statement signed by authorized persons of each party to the Joint Venture. Each Party to the Joint Venture shall comply with the above requirements for Corporations, Co-Partnerships, or Individuals, as applicable.

Failure to fully complete and respond in the manner prescribed shall result in the rejection of the Bid as non-responsive.

If signature on Bid is by an agent other than an officer of a corporation or a member of a co-partnership, a Power of Attorney must either be on file with the City Clerk prior to opening or submitted with the Bid in Packet B.

A Bidder will be deemed to be unqualified to perform the Contract if, after review and verification of the representations included upon the Contractor's Questionnaire submitted by the Bidder, the following conditions appear:

a. Bidder does not have sufficient prior experience (or an acceptable substitute therefore, as described below) with projects of a similar nature in technical, managerial, and financial requirements to that in the present Contract being Bid.

b. Bidder does not have sufficient financial capability to undertake the obligations of the Contract. A determination in this respect will be made when the City, upon review of the probable cash flow needs of the Contractor for this particular Contract (to include payroll, costs of material and supplies, equipment rental costs, and any other direct or incidental costs of the Contract), determines that Contractor does not have sufficient financial resources to enable him to continue to satisfy his financial obligations under the Contract. The City will consider all other pertinent financial data required by this clause and submitted by the Contractor.

c. Bidder does not have sufficient staff, equipment, or plant available to perform the Contract. City's determination in this matter will be based upon that represented by Bidder in his completion of the Contractor's Questionnaire documents discussed above.

d. Bidder has a consistent history of unsatisfactory performance of Contracts of this or similar nature, regardless of whether such Contracts existed between City and the Contractor, or other parties and the Contractor.

Bidder's representations concerning his qualifications will be construed as a covenant under the Contract. Should it appear that Bidder has made a material misrepresentation on his Contractor's Questionnaire form, the City shall have the right to terminate the Contract for Contractor's breach, and the City may then pursue such remedies as exist elsewhere under this Contract, or as otherwise are provided at law or equity.

The City of Homer's Credit Policy states that "No Contractor, the hiring of whom is under the control of the City, shall be hired for contractual services if shown to be on the delinquent list." The Delinquent List" consists of the following:

On the Port and Harbor Aging Report, any customer who has charges in the 60 day or over column will be considered delinquent. On the Water and Sewer Aging Report, any customer who has charges in the 30 day or over column will be considered delinquent.

Any determination that a Bidder is unqualified will be made by the City. Such determination will be made in writing and include a thorough discussion of why the Bidder is deemed unqualified. A letter will be sent to the Bidder deemed unqualified, stating the reasons for such determination, and the Bidder's right to request a review of this determination by appeal to the Homer City Council.

Article 3.2 **Receipt and Opening of Bids**

a. Time of Opening

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

The official time shall be shown in the Invitation to Bid.

b. Oral, Telephonic, and Facsimile Bids

Oral, telephonic, and facsimile Bids will not be considered. Modification by facsimile, of Bids already submitted, will be considered if received prior to the time fixed in the Invitation to Bid. Facsimile modifications shall indicate the amount of the revised Bid and shall be signed by a properly authorized agent, officer, or partner.

c. City's Responsibility

No responsibility will be attached to any officer or employee of the City for the premature opening of, or the failure to open, a Bid or facsimile modification not properly addressed and identified.

d. Opening of PART A and PART B

PART B of the Bid will be opened first and if found complete and responsive, PART A will be opened. If PART B is found to be incomplete, the bid will be non-responsive and PART A will not be opened and the Bid will not be considered.

Article 3.3 **Withdrawal of Bids**

Bids may be withdrawn on written or facsimile request received from bidders, prior to the time specified for opening. Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with the Instructions to Bidders.

Article 3.4 **Multiple Bids**

Multiple bids offered by a single Bidder shall result in the rejection of all bids by that bidder.

Article 3.5 **Bidders Present**

At the time and place specified for the opening Bids, contents of the bids will be made public for the information of Bidders and others properly interested, who may be present either in person or by representation.

Article 3.6 Action On Bids

The City reserves the right to reject any or all Bids, and to waive any informalities and irregularities in Bidding or award of Contract. In accordance with the City of Homer Procurement Regulations, the following provisions shall apply:

a. When the Bidding documents contain a basic bid and alternates, only the total of the basic bid and the alternates to be awarded shall be used to determine the low Bidder.

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

When the Bidding documents contain deductive alternates, the low Bidder will be determined by the lowest basic bid. If the lowest basic bid exceeds the funds available, the low bidder will be determined by eliminating deductive alternates in the order listed in the Bid until the award can be made within the available funds. The City of Homer may bypass any deductive alternate to maximize the use of available funds.

b. The City reserves the right to reject any Bid which exceeds the Fair Cost Estimate by more than fifteen percent (15%).

c. Any bids found to have arithmetic errors or other pricing ambiguities which affect the total Bid price may be rejected. In evaluating Bids, the City will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, alternatives, and unit prices if requested in the Bid forms. The City may consider the qualifications and experience of subcontractors, and may reject the Bid of any Bidder or Subcontractor who does not pass any such evaluation to City's satisfaction.

d. Unbalanced Bids - Submission of unbalanced bids is not allowed. An unbalanced bid is when, for a variety of reasons, a contractor raises the prices on certain bid items and decreases the prices on others proportionately so that the bid for the total job remains unaffected. Unit bid prices for each individual item shall accurately reflect the true cost of performing the work and each item shall bear its proportionate share of costs and overhead, and profit. In the case of increased quantities, or where additional work is paid for under unit prices bid, no claim for extra expense other than the bid price will apply except as allowed in *Section 10.04, Article 4.3 Increased or Decreased Quantities*. In the case of decreased quantities, the decrease will be calculated using the unit bid price. No claims for additional expense or loss of anticipated profits shall apply, except as allowed in *Section 10.04, Article 4.3 Increased or Decreased Quantities*. Bids may be rejected if, in the opinion of the Engineer, the Bid is unbalanced.

e. Local Bidder Preference

1. It is the policy of the City of Homer to give preference to City of Homer residents, workers, businesses, contractors, producers and dealers to the extent consistent with law.

2. A contract or purchase shall be awarded to a local bidder where the bid by such local bidder is, in all material respects, comparable to the lowest responsible non-local bid if the amount bid by such local bidder does not exceed the lowest non-local bid by more than the following percentages, unless such an award is contrary to state or federal law or regulation or unless the Council, at its discretion, determines prior to giving notice soliciting bids that the provisions of this section shall not apply to the contract or purchases:

Non - local bid is:

\$0 - \$ 500,000.00

\$0 - \$1,000,000.00

Local bid is not more than:

5 percent higher than non-local bid

5 percent higher than non-local bid on first \$500,000.00 and 2.5 percent higher than non-local bid on amount in excess of \$500,000.00 to \$1,000,000.00

No additional adjustment for bids above \$1,000,000.00

3. "Local bidder," for purposes of this section, means a person or firm who:

a. Holds a current Alaska Business License to provide such goods or services, and such other Alaska regulatory licenses as are required to provide such goods or services; and

b. Submits a bid for goods or services under the name appearing on the person's or firm's current Alaska Business License; and

c. Has maintained and staffed a place of business within the boundaries of the City of Homer for a period of at least six (6) months immediately preceding the date of the bid and intends to permanently maintain such place of business in the future; and

d. Is registered in the Kenai Peninsula Borough to collect sales tax and locally provides the products and services sought; and

e. Is not delinquent in the payment of any taxes, charges, or assessments owing to the City of Homer on account of that business.

4. The City Manager may require such documentation or verification by the person or firm claiming to be a local bidder as is deemed necessary to establish the requirements of this section.

5. Local bidder's preference does not apply to sale or other disposal of personal property in chapter 18.30 of the City Code.

Article 3.7 Amount of Contract

The amount of the Contract shall be understood to be the total sum of the amounts computed from the approximate quantities and unit prices or the lump sum as given in the proposal form. Where prices are given on alternate items, only the amounts of the alternates accepted by the City will be included in the total.

Article 3.8 Award of Contracts

a. Notice of Award

The acceptance of the Bid will be written Notice of Award, mailed or delivered to the location designated in the Bid. In the event of failure of the lowest responsible Bidder to sign and return the Contract with acceptable Performance and Payment Bonds and Certificate of Insurance as prescribed herein, the City may award the Contract to the next lowest responsible Bidder.

b. Execution of Contract

1) By Contractor: The Bidder whose bid is accepted shall execute the Contract and furnish the required bonding, Insurance Certificates, and Department of Labor's Notice of Work within ten (10) days after receiving the Notice of Award. The Notice of Work submittal shall be date stamped from the Department of Labor. 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. Failure or neglect to execute the Contract within the time specified shall constitute a breach of the agreement effected by the acceptance of the Bid

The amount of the bid guarantee of the successful Bidder who fails or neglects to execute the Contract after proper Notification of the acceptance of the Bid, shall be retained by the Owner as liquidated damages for such breach.

2) By Owner: Upon receipt of at least two copies signed by the Contractor, the properly authorized Owner representatives will execute the documents within ten (10) working days. The Notice to Proceed will also be issued within (10) days of complete execution of the Contract unless otherwise specified in the Special Provisions. The Engineer, or authorized representative, and his address shall be designated in the Notice to Proceed. The Contract shall be deemed to be completely executed when at least two (2) copies thereof, accompanied by the required bonds, liability, and other necessary insurance, and signed by the contractor, are executed by the Owner. The rights and obligations, provided for in the contract shall become effective and binding upon the parties only after its formal execution on behalf of the Owner.

Article 3.9 **Contractor to Furnish Performance and Payment Bond**

If the Bidder fails to provide the required Performance Bond and Payment Bond within ten (10) days from the date on which the Bidder is notified of being the successful Bidder, the Bid Bond and the amount thereof shall be forfeited to the City.

The Performance and Payment Bond shall be in the amounts according to the following schedule:

Contract Amount	Performance and Payment Bond Amount	
Over \$10,000	Performance Bond	50%
	Payment Bond	50%

The bonds shall be maintained in force during the continuance of this Contract and shall be intended for the faithful performance of the Contract in all respects, including but not limited to payments for all materials, labor, etc., and no Contract shall be binding until the said bonds are furnished and approved by the Owner. No work may commence until the bonds have been approved by the Owner. All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing the consent of the surety, or sureties, of the Contract bond. Power of Attorney for the official signing the bond for the surety company must be submitted with the bond.

Article 3.10 **Guarantee and Warranty Section**

The Contractor and its Surety shall guarantee all items of materials, equipment, and workmanship against defects for a period of one year beginning on the date of Certificate of Completion.

The Contractor shall immediately attend to warranty repairs. If the defect, in the opinion of the City, is of such nature as to demand immediate repair, the City shall make such repair and the cost thereof shall be borne by the Contractor.

Article 3.11 **License Requirements**

Contractors and Subcontractors, in order to perform public work in the State of Alaska, are required to hold State of Alaska Contractor's licenses of the class required to perform the specified work. General Contractors licenses are necessary where more than two (2) distinct trades are required to perform the work. Contractors and Subcontractors are also required to hold current Alaska Business Licenses in order to perform public work in the State of Alaska. Contractor's License, and Business License numbers shall be inserted in the appropriate place on the Bid Form. Evidence of Subcontractors' compliance with the above shall be submitted to the Engineer before starting subcontract work on public work Contracts.

Article 3.12 **Compliance with Law**

Contractors and Subcontractors shall comply with all applicable statutes, ordinances, federal, state, or local laws of any government entity having jurisdiction in the project area.

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SECTION 10.04 **SCOPE OF WORK**

Article 4.1 **Intent of the Plans and Specifications**

The true intent of the plans and specifications is to provide for the execution and completion in every detail of the work described in the Contract Documents. Except as otherwise specifically provided, the Contractor shall furnish all labor, tools, implements, machinery, supplies, materials, and incidentals, and shall do all things necessary to perform and to complete, according to the plans and specifications, the work to be done under the Contract.

Article 4.2 **Estimates of Quantities Approximate Only**

It is expressly agreed that the quantities shown in the Bid form whether for a “Unit Price Contract” or in connection with a “Lump Sum Contract,” given under the heading “Schedule of Contract Prices” are approximate only for use as a basis for comparison of Bids and are not to be taken to be either representations or warranties. The Owner does not expressly nor by implication agree that the actual amount of work will correspond therewith.

Article 4.3 **Increased or Decreased Quantities**

The Owner reserves the right to increase or decrease the quantity of any item or portion of the work or to omit portions of the work; also to make such alterations or deviations, additions to, or omissions from the plans and specifications as may be determined during the progress of the work to be necessary and advisable for the proper completion thereof. No re-negotiation of unit prices will be considered unless one of the following conditions is satisfied:

- a. The total quantity changes result in a total Contract Cost increase or decrease of twenty-five percent (25%) or more.
- b. The actual quantity of work for any major item differs by more than twenty-five percent (25%) of the estimated quantity stated in the Contract for such item. A major item is defined as any item, unless otherwise indicated on the drawings or designated in the Special Provisions, for which the Contract price amounts to ten percent (10%) or more of the total Contract price as determined by the original quantities and the unit contract prices.

Where the total Contract Cost decreases by twenty-five percent (25%) or more and/or the actual final quantity of work for any major item is less than the estimated quantity stated in this Contract by more than twenty-five percent (25%), the Contractor will be paid at the Contract unit price for those items of work actually performed and, in addition, may request compensation for the loss of indirect costs, and profit on those indirect costs, on

the quantity of work represented by the difference between the actual quantity and the estimated quantity of work less twenty-five percent (25%) thereof. Indirect costs and profit on indirect costs shall be considered as a total of fifteen percent (15%) of the unit price of a major item or ten percent (10%) of the original item amount, if a major item is not involved.

Article 4.4 **Changed Conditions**

a. The Contractor shall promptly, within two (2) working days and before such conditions are disturbed, give a written notice to the Engineer of:

- 1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or
- 2) unknown physical conditions at the site of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

b. The Engineer shall investigate the site conditions promptly after receiving the written notice. If the conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or of the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract modified in writing accordingly.

c. No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed unless the Contractor has given the written notice required; provided, however, the time prescribed in "A" above for giving written notice may be extended by the Engineer.

d. No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

Article 4.5 **Disposal Sites**

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

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

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SECTION 10.05 **CONTROL OF WORK**

Article 5.1 **Authority of the Engineer**

The Engineer shall be the City's representative and shall observe the Work in progress on behalf of the City and will be identified at the time of the Notice to Proceed. The Engineer shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Visits and observations made by the Engineer shall not relieve the Contractor of his obligation to conduct comprehensive inspections of the work and to furnish materials and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract. The Work will not be considered completed until approved by the Engineer and accepted by the City. 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, in all cases, make determinations on any and all questions which may arise concerning the quality, quantity, and acceptability of materials furnished and work performed; the manner and rate of progress of the performance of all work; the interpretation of plans, specifications, and contract documents.

In the case of the termination of the employment of the Engineer, the Owner shall appoint a capable and reputable Engineer whose status under the Contract shall be that of the former Engineer. The Owner shall give the Contractor notice of such appointment in writing.

If the Contractor determines that instructions, clarifications, or directions issued by the Engineer constitute a change in the requirements of the Contract Documents, he may make claim as provided under *Article 5.22, Claims for Damage or Extra Work*.

Article 5.2 **Interpretation of Contract, Specifications, and Plans**

These specifications, plans, special provisions, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work.

In case of conflict in the requirements and provisions as set out by the Contract, the specifications, or the plans, such conflict shall be resolved by the acceptance of the following order of precedence for the various Contract Documents: **1)** Change orders; **2)** the Contract bearing the signature of the City and the Contractor; **3)** addenda; **4)** the written Bid of the Contractor; **5)** Special Provisions; **6)** General Provisions; **7)** Technical Specifications; **8)** Contract Drawings (plans); **9)** Instructions to Bidders. Figure dimensions on the drawings will be used in preference to scaling the drawings. If

dimensions are omitted, operations shall not be started on that part of the construction until the necessary dimensions have been obtained from the Engineer in an Engineer's Instruction or on a Contract Drawing.

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

Article 5.3 **Plans, Materials, Equipment, and Workmanship**

a. Plans, Shop and Supplemental Drawings

The Contractor will be supplied with five (5) sets of specifications and prints of the drawings (plans) showing the project in detail, together with all Addenda thereto. Additional copies of the contract specifications and drawings may be obtained from the Engineer on the following basis:

Full or partial set of contract drawings	\$ 4.00 per sheet
Each book of contract specifications	\$50.00 per book
Homer Standard Construction Specifications	\$50.00 per book

General drawings showing such details necessary to give a comprehensive idea of the construction contemplated will be included in the plans; but the Contractor shall submit to the Engineer for review such additional shop details, settings, schedules, product data (including illustrations, performance charts, brochures, diagrams and other information to illustrate materials or equipment for some portion of the work), and other such supplemental drawings (collectively, "Submittals") as may be required for the construction of any part of the work. Any work done, or material ordered prior to the approval of such Submittals by the Engineer shall be at the Contractor's risk.

All shop drawings, product data, and other Submittals shall be made in such a manner that clear and legible reproductions can be made from them. Any Submittals which are, in the Engineer's opinion, carelessly prepared, erroneous or unchecked, will be returned to the Contractor for redrawing and checking, and after such redrawing and checking shall be resubmitted to the Engineer.

Shop drawings for structural steel items, structures, or miscellaneous iron items shall consist of shop details, erection and other working plans showing dimensions, sizes of material, lists of field rivets and bolts, details, and other information necessary for the complete fabrication and erection of all such metal work.

Shop drawings for structural elements shall consist of such detailed plans as may be reasonably required for the successful prosecution of the work and which are not included in the plans furnished by the Engineer. These may include plans for false work, bracing, centering and form work, masonry layout diagrams, bar schedule for steel reinforcement, shop details for pre-cast concrete items, and installation drawings or instructions. All structural shop drawings shall be sealed by a Registered Professional Engineer.

The Contractor shall submit, with such promptness as to cause no delay in his own work or in that of any other Contractor, four (4) copies of each Submittal required for the work. The Engineer will check and return two (2) copies of such Submittals only for conformance with the design concept of the project and compliance with the information given in the Contract Documents. Review of Submittals by the Engineer or Owner is subject to the limitations of *Paragraph 5.3.j Limited Scope of Review and Approval*. The approval of any Submittal by the Engineer shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has in writing called the Engineer's attention to such deviations at the time of submission and secured the Engineer's written approval, nor shall it relieve him from responsibility for errors of any sort in the items submitted.

The Contract Bid prices shall include the cost of furnishing all Submittals and the Contractor will be allowed no extra compensation for such Submittals. The Contractor shall keep one copy of all Submittals (including shop drawings) and specifications on the work, in good order, available to the Engineer and to his representatives at the construction site.

b. Material Substitutes and "Or Equals"

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

The Contractor shall furnish the Engineer the complete list of proposed desired substitutions together with such engineering and catalog data as the Engineer may require, in sufficient time prior to their use to give the Engineer adequate time for his review. Failure on the part of the Contractor to supply data to the Engineer prior to ordering or using such alternate material or equipment will not relieve the Contractor of furnishing acceptable material or equipment as required by the Engineer.

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

c. Materials Approval Data

Only materials conforming with the specified requirements in the Contract Documents shall be used in the work.

Before delivery to the job site of any material to be used in the work, the Contractor shall have provided to the Engineer for review and approval such product data, samples or other submittal needed to demonstrate the way the Contractor proposes to conform to the requirements and design concept expressed in the Contract Documents. The approval of any material or source of supply by the Engineer will not imply that all material from that source will be approved, and should material from an approved source fail to maintain a quality meeting the requirements of the specifications, use of material from that source shall be discontinued, and the Contractor shall furnish approved material from other sources. Regardless of prior approval, any material incorporated into the work which fails to meet the requirements may not be allowed to be incorporated in the work. Material which after approval has, for any reason, become unsuitable for use, shall be rejected and not used.

The approval of any Submittal for materials by the Engineer shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has in writing called the Engineer's attention to such deviations at the time of submission and secured the Engineer's written approval, nor shall it relieve him from responsibility for errors of any sort in the items submitted.

The Contractor shall check and approve the item described by the Product Data with the Contract Documents for deviations and errors prior to submittal to the Engineer for approval. It shall be the responsibility of the Contractor to insure that items to be furnished fit the space available.

Satisfactory proof of compliance with the specifications shall be submitted in one of the following ways:

1. Manufacturer's Certificate

For standard labeled stock products of standard manufacture which give a record of satisfactory performance in similar work over a period of not less than two (2) years, the Owner may accept a notarized statement from the manufacturer certifying that the product conforms to the applicable specification.

2. Mill Certificates

For materials, where such practice is the usual standard, the Owner may accept manufacturer's certified mill and laboratory certificate.

3. Laboratory Certification

The Owner may accept a certificate from a commercial testing laboratory satisfactory to

him certifying that it has tested the product submitted within a period acceptable to the Owner, and that it conforms to the specifications.

d. Storage of Materials

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 dampness, or to keep them clean and free from dust, dirt, or other detrimental matter, suitable sheds, platforms and covers shall be provided. Materials shall be stored in such a manner as to facilitate inspection.

e. Defective Materials

All materials not conforming to the requirements of the material specifications shall be considered as defective. No defective material, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure on the part of the Contractor to remove, repair, or replace defective material when so ordered by the Engineer, the Owner shall have authority to remove, repair, or replace such defective material and to deduct all costs so incurred from any money due or to become due the Contractor. Defective material not permitted for use shall be immediately removed from the site or disposed of as directed by the Engineer.

f. Materials Furnished by the Owner

Materials specifically indicated shall be furnished by the Owner. The fact that the Owner is to furnish material is conclusive evidence of its acceptability for the purpose intended, and the Contractor may continue to use it until otherwise directed. If the Contractor discovers any defects in material furnished by the Owner, he shall notify the Engineer. Unless otherwise noted or specifically stated, materials furnished by the Owner, which are not of local occurrence, are considered to be f.o.b. the nearest freight station. The Contractor shall be prepared to unload and properly protect all such material from loss or damage after receipt of material at the point of delivery.

g. Manufacturer's Directions

Manufactured articles, material, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer. Instructions and directions for any owner-furnished materials and equipment will be furnished to the Contractor by the Engineer.

h. Equipment Approval Data

The Contractor shall submit to the Engineer for review and approval four (4) copies of catalog data, as required by the Contract Documents, for the manufactured items of equipment and all components. Catalog data may include specified performance data, material description, rating, capacity, working pressure, material gauge or thickness, brand name, catalog number, and general type, as requested by the Engineer.

The Submittal shall be compiled by the Contractor and approved by the Engineer before any of the equipment is delivered to the job site. After written approval, this Submittal shall become a part of the Contract, and may not be deviated from except upon written approval of the Engineer.

The approval of catalog data by the Engineer shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has in writing called the Engineer's attention to such deviations at the time of submission and secured the Engineer's written approval, nor shall it relieve him from responsibility for errors of any sort in the items submitted. The Contractor shall check and approve the work described by the catalog data with the Contract Documents for deviations and errors prior to submission to the Engineer for approval.

It shall be the responsibility of the Contractor to insure that items to be furnished fit the space available. He shall make necessary field measurements, including those for connections, and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the drawings and specifications.

Where equipment requiring different arrangement of connections from those shown is approved, it shall be the responsibility of the Contractor to install the equipment to operate properly, and in harmony with the intent of the drawings and specifications and to make all changes in the work required by the different arrangement of connections.

After approval by the Engineer, the Contractor shall furnish three (3) copies of such catalog data of all process equipment or components thereof together with operating and maintenance instructions.

Photocopies of catalog data are not allowed as submittals for operating and maintenance manuals. **Original catalog cuts are required for these manuals.**

i. Testing

All tests shall be made in accordance with approved methods as described and designated in the specifications. When tests of materials are required, such tests, unless otherwise noted in the Technical Specifications, shall be made by a testing laboratory approved by the Engineer and at the expense of the Owner. The Contractor shall afford such facilities as may be required for collecting and forwarding samples 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 or to approved samples. The Contractor in all cases shall furnish the required samples without charge.

In the absence of any definite specification or reference to a specification in the technical specifications or in the special provisions for the particular project involved, it shall be understood that such materials and tests shall meet the specifications and requirements of the American Society for Testing and Materials.

Wherever in the specifications 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.

Re-tests of materials in constant use may be required periodically by the Owner. Required re-testing shall be accomplished at the expense of the Contractor when materials have previously been tested and have not met the requirements of the specifications.

j. Limited Scope of Review and Approval

The Engineer will review and approve or take other appropriate action upon the Contractor's Submittals such as shop drawings, or catalog product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's review of the Contractor's Submittals shall not relieve the Contractor of the warranty obligations under *Article 7.11, Correction of Work After Final Payment*.

The Engineer's review or approval of Submittals shall not constitute review or approval of the Contractor's safety program or safety precautions, all of which remain the sole responsibility of the Contractor, as more fully described in *Article 6.5, Industrial Safety*. Unless otherwise specifically so stated by the Engineer, review or approval of Submittals shall not constitute approval of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

Article 5.4 Cooperation with Other Contractors

The Contractor shall conduct his operations so as to interfere as little as possible with those of other Contractors or Subcontractors on or near the work. It is expressly understood that the Owner has the right and may award other Contracts in connection with the work so long as it does not interfere with the work under this Contract.

Article 5.5 Contractor to Have Representative at Work Site

The Contractor shall within five (5) days after the Notice to Proceed, name the Superintendent, the Safety Supervisor required by *Article 6.5, Industrial 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 Contractor shall at all times have a competent Superintendent or Foreman capable of reading and thoroughly understanding the plans and specifications as his agent on the work, who shall have authority to receive instructions from the Engineer or his authorized

representatives. The Superintendent or Foreman shall have full authority to execute the orders or directions of the Engineer without delay and to supply promptly such materials, tools, plant, equipment, and labor as may be required, regardless of whether or not the work is to be performed by the Contractor's own forces or those of a Subcontractor.

The Contractor shall not employ or continue to employ on the project, a Project Construction Manager, Superintendent or Foreman who is unsatisfactory to the Owner.

The fact that an approved Subcontractor is performing any portion of the work shall not relieve the Contractor of this requirement. The Owner has the authority to require the Contractor to designate the chain of command at the pre-construction conference or at any time thereafter.

Article 5.6 **Certified Payrolls**

All Contractors who perform work on a public construction Contract shall file with the Alaska Department of Labor, Labor Law Compliance Division, and the Owner, a certified payroll on Friday of each week that covers the preceding week.

Article 5.7 **Notice to Contractors**

Any written notice to the Contractor which may be required by law or by the provision of the specifications may be served on said Contractor or his representative, either personally or by mailing to the address given in the Contract.

Article 5.8 **Notice by Contractors**

Wherever in the specifications the Contractor is required to notify the Engineer concerning the work, or concerning any complaint which he may have to make, or for any reason, it shall be understood that such notification is to 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."

Article 5.9 **Construction Surveying by the Contractor**

The Contractor shall perform all surveying and staking essential for the completion of the project in conformance with the plans and specifications, and shall perform all the necessary calculations required to accomplish the work. Staking, surveying, computations, and calculations shall be accomplished in accordance with standard engineering and surveying practice.

The Owner will provide a benchmark and sufficient centerline points or references thereto, at the beginning of the project, to enable the establishment of the planned elevations and centerline by the Contractor.

The Contractor shall use competent personnel and suitable equipment for the layout work required and shall furnish all stakes, templates, straight edges, and other devices necessary for checking and maintaining points, lines and grades.

The Contractor shall be responsible for the supervision of the construction surveying personnel and any errors resulting from the operations of said personnel shall be corrected at the expense of the Contractor, and at no additional cost to the Owner.

The Owner may randomly spot check the Contractor's surveys to insure that the work is within the order of accuracy required, but the Owner assumes no responsibility for the accuracy of the work.

The Contractor shall perform all staking necessary to delineate clearing and grubbing limits; all cross sections necessary for determination of excavation and embankment quantities, including intermediate and re-measure cross sections; all staking of culverts, utilities, structures, and appurtenances, and other features required for successful completion of the work.

If necessary, forty-eight hours shall elapse between the completion of clearing limits staking and the beginning of the clearing and grubbing operations to allow for coordination with affected property owners.

The Contractor's surveyor shall make a conscious attempt to locate all property corners and monuments along the route of work, and shall reference those corners that may be disturbed due to this work. At the completion of the project, the Contractor shall restore all disturbed property corners and monuments at no additional cost to the Owner. This work shall be performed by a land surveyor registered in the State of Alaska or under his immediate direction.

The Contractor's surveyor shall maintain accurate and up-to-date as-built measurements of the ongoing construction. Upon completion of the project, the Contractor shall provide the Owner with one set of redline record drawings and survey notes. This work shall be under the direct supervision of a professional land surveyor, licensed in the State of Alaska, who shall stamp the survey notes and record drawings.

The Owner may retain up to five (5) percent of the total contract amount until the record drawings are received in a satisfactory form.

Article 5.10 **Protection of Property**

a. The Contractor shall continuously maintain adequate protection of all its construction, the Owner's property, and the adjacent public and private property from damage, injury, or loss arising from construction. The Contractor shall pay for any damage, injury, or loss resulting from inadequate protection. The Contractor shall maintain adequate insurance coverage to protect the work from loss until the work is accepted for Owner occupation and operation.

b. The Contractor shall not enter upon public or private property for any purpose without obtaining permission from the proper public authority or private property owner. Construction on state highways, or any public right-of-way shall meet the requirements of the authority having jurisdiction over such right-of-way. It shall be

the Contractor's responsibility to notify said authority before beginning construction to ascertain that the schedule of operations proposed is satisfactory to the authority.

c. Wherever construction under the Contract is undertaken on easements or rights-of-way over private property, or public right-of-way franchise, all construction operations shall be confined to the limits of such easement, right-of-way or franchise and to be completed so as to cause the least amount of disturbance and a minimum amount of damage.

d. Construction across public or private property shall be carried out in one (1) continuous operation with immediate restoration and cleanup of the construction area. If the Contractor should fail to perform such construction, restoration and cleanup continuously, the Owner may give the Contractor a written notice to do so. In the event of failure by the Contractor to complete such construction, restoration and cleanup within five (5) days after receipt of such notice, the Owner may complete same to the extent the Owner deems advisable. The cost of all labor, material, supervision, and other expenses incurred by the Owner in so doing shall be paid by the Contractor to the Owner and if not so paid, shall be deducted from any payments due the Contractor under the Contract.

e. The Contractor shall protect and maintain all underground or above ground utilities and structures affected by its construction and all lawns, shrubs, trees, fences, and other improvements on property crossed over or adjacent to its operations, and shall repair and restore in a satisfactory manner at its expense all damage resulting from the Contractor's operations. The Contractor shall be responsible for all damage caused by its construction to roads, highways, ditches, walls, bridges, culverts, utilities, barricades, lights, or other property, whether such damage be at the Project site or elsewhere, and the Contractor shall repair or replace at its own expense all such damage in a satisfactory manner.

f. It is expressly understood that the Contractor shall restore all easement and right-of-way property to a condition equal to its original condition. Before beginning construction the Contractor shall file with the Engineer properly identified and dated photographs of such property as may be designated on the Contract Drawings or described in the Special Conditions.

g. Protection of Water Resources. The Contractor shall control the disposal of fuels, oils, bitumens, calcium chloride, acid or harmful materials, both on and off the premises, and shall comply with applicable federal, state, and municipal laws concerning pollution of waterways while performing work under this Contract. Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, and sewage from entering established drainages.

The Contractor shall control the discharge of mud, debris, or turbid water from impacting surface or subsurface waters, wetlands, estuaries, or private property. Environmental laws and regulations of the United States and the State of Alaska shall be observed by the Contractor at all times.

h. Dust and Mud Control

1. The Contractor shall maintain all excavations, embankments, stockpiles, access roads, waste areas, borrow areas, and all other work areas free from excess dust and mud to such a reasonable degree as to avoid causing a hazard or nuisance to others.
2. All existing paved areas and roadways, especially heavily traveled roads, 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 operation during the construction period.

Article 5.11 **Inspection of Construction**

a. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the City. All work shall be conducted under the general direction of the Engineer and is subject to the City's or Engineer's inspections and tests at all places and at all reasonable times, before acceptance, to ensure strict compliance with the terms of the contract.

b. The Owner, Engineer or their representatives shall be allowed access to all parts of the work at all times and to the preparations, fabrication or manufacture of the materials or equipment to be used, and shall be furnished with every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and the intent of the plans and specifications.

c. Any Owner or Engineer tests or inspections pursuant to this *Article 5.11* are for the sole benefit of the Owner and do not:

1. Relieve the Contractor of responsibility for providing adequate quality control measures;
2. Relieve the Contractor of responsibility for safety at any time or for damage to or loss of the material before acceptance;
3. Constitute or imply acceptance; or
4. Affect the continuing rights of the Owner after acceptance of the completed work.

d. Inspectors are not authorized to alter or waive the provisions of the Contract. Inspectors are not authorized to issue instructions contrary to the plans and specifications.

e. If the Engineer requests it, 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 portions of the work to the

standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the coverage or the making good of the parts removed, shall be paid for as “extra work”, but should the work so exposed or examined prove unacceptable, the covering or removing, and replacing of the covering and the making good of the parts removed, shall be at the Contractor’s expense under the terms of *Article 5.18, Cleaning Up*.

f. If the Contractor does not promptly replace or correct rejected work, the City may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor’s right to proceed.

g. When any unit of government, political subdivisions, utility, or corporation is to pay a portion of the cost of the work covered by this Contract, its respective representatives shall have the right to inspect the work. Such inspection shall in no sense make any unit of government, political subdivision, utility, or corporation a party to this Contract, and shall in no way interfere with the rights of either party hereunder.

Article 5.12 **Temporary Erosion Control During Construction**

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

The Contractor is directed to Alaska State regulations which state that no person may conduct an operation which causes or contributes to a violation of water quality standards set forth in 18AAC70.

Unless a temporary erosion control plan during construction is specifically called out and included in the drawings and other contract documents, the Contractor shall provide a Storm Water Pollution Prevention Plan (SWPPP) describing temporary erosion control measures to be employed during construction. The SWPPP shall be delivered to the Engineer within ten (10) days of the effective date of the Notice to Proceed or five (5) days before the commencement of work, whichever is the earlier date. The Engineer will review and accept or reject the plan within five (5) working days. The accepted temporary erosion control measures shall be in place immediately after the Contractor mobilizes to the job site and before any construction begins.

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

Temporary erosion control measures shall remain in place and in good working condition until work is complete under the Contract. The continued maintenance of these

temporary erosion control items and replacement of damaged items shall be the ongoing responsibility of the Contractor. Under *COHSCS Section 10.05* of these Contract Documents the Engineer may suspend work if the Contractor fails to carry out the requirements of the temporary erosion control plan. After suspension of the work, the Owner may perform or contract the performance of the erosion control measures and deduct those costs from the Contractor's progress payments.

Payment for this work shall be considered incidental to the Contract and no separate payments shall be made unless otherwise identified in the Bid Schedule.

Article 5.13 **Final Inspection**

The Contractor shall, upon completion of all work involved, notify the Engineer in writing of completion and request a semi-final inspection of the project. This inspection will be performed in the presence of representatives of the City, the Engineer, and the Contractor. The Contractor, at his expense, will be prepared to expose all gate valve risers and manhole lids to allow inspection during the semi-final inspection and the final inspection. Copies of a list of deficiencies, if any, indicated by this inspection will be promptly furnished to the Contractor for remedial action. When all corrective action has been completed, the Contractor shall notify the City and an acceptance inspection will be performed. When this inspection verifies correction of the listed deficiencies, **and all as-builts and/or manuals are submitted and approved**, the Engineer will issue a **Certificate of Completion** and accept requests for a Final Pay Estimate. **The Contractor shall submit a Certificate of Compliance along with the Final Pay Application.**

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

Article 5.14 **Suspension of Work**

When, in the judgement of the Engineer, unfavorable weather, or other conditions warrant the granting of a suspension order, the Engineer shall issue to the Contractor a written order to suspend work wholly or on any part of the Contract. When conditions are again favorable for prosecution of the work the Engineer shall issue to the Contractor a written order to resume the suspended work. Orders to suspend work will not be written for intermittent shutdowns due to weather conditions except under the provisions of *Section 10.05, Article 5.28, Limitations of Operations*. 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 shall not furnish any grounds for claims by the Contractor for damages or extra compensation, but the period of such suspensions shall be taken into consideration in determining the revised date for completion as hereinafter provided. The Contractor shall not suspend work under the Contract without the written order of the Engineer as stated in the preceding paragraph. Questions as to the necessity of suspending any portion of the work shall be determined by the Engineer.

Upon failure of the Contractor to carry out the orders of the Engineer or to perform work under the contract in accordance with its provisions, the Engineer may suspend the work for such period as he may deem necessary. Time lost by reason of such suspension or in replacing the improper work or material shall not furnish any grounds to the Contractor for claiming an extension of time or extra compensation, and shall not release the Contractor from damages or liability from failure to complete the work within the time prescribed.

In the event that a suspension of work is ordered in writing by the Engineer for an extended period of time due to unsuitable weather, the Contractor, at his own expense, shall do all work necessary to provide a safe, smooth and unobstructed roadway through the construction area for use by public traffic, and particularly for access to abutting property, during the period of suspension. If the Contractor fails to do the work as above specified, the City will perform such work and deduct the cost thereof from any monies due or to become due the Contractor.

In the event that a suspension of work for an extended period of time is ordered in writing by the Engineer due to unsuitable weather or unforeseen conditions and, in the opinion of the Engineer, the Contractor has prosecuted the work with energy and diligence prior to the time of suspension of operations and has so constructed the temporary roadway or detour that it may be maintained by routine maintenance forces of the Owner during the period of suspension, maintenance will be borne by the Owner at no cost to the Contractor.

In the event that a suspension of work for an extended period of time is ordered in writing by the Engineer on oiling or resurfacing projects which do not require disturbing the existing traveled surface and on which the existing surface or shoulders have not been disturbed by the Contractor, the City will maintain the roadway at no cost to the Contractor during the period of suspension.

If a suspension of work for an extended period, under which the City assumes the responsibility of maintenance, it is granted in writing by the Engineer, the City will assume no responsibility except for routine maintenance which shall include and be restricted to the following:

- a.** Maintenance of the traveled roadway and/or detour surface.
- b.** Maintenance of roadway surface drainage along roadway and/or detour.

Any areas which are closed to traffic shall be maintained and safeguarded by the Contractor at his own expense.

In the event that the City has assumed maintenance of a project during a period of suspension, the Contractor agrees to accept the roadway or detour as it has been maintained by the City and no claim for extra payment shall be made on account of its condition or in the manner in which the maintenance has been performed by the City. Such suspensions of work shall not relieve the Contractor of his responsibility of restoring the roadway and its slopes to the designated roadway section at his unit

Contract prices and for performing all other remaining work in accordance with the Contract.

An extended period of time as expressed in these specifications is intended to mean shutdowns ordered in writing by the Engineer to cover extended shutdowns due to winter or seasonal weather, or extended shutdowns due to delays occasioned by the failure of another Contractor to complete a portion of the work on which progress of the Contract is dependent, or for other causes approved by the Engineer.

Article 5.15 (Deleted)

Article 5.16 **Protection of Work During Suspension**

If it should become necessary, for any reason, to stop work, the Contractor shall open proper drainage ditches, erect temporary structures where necessary, prepare the work so there will be minimum interference with traffic, and take every precaution to prevent any damage or unreasonable deterioration of the work during the time the work is closed. Unless otherwise provided in the work suspension order, the Contractor will be responsible for all damage to the work that may occur during suspensions of work the same as though the damage has occurred while the work was in progress.

Article 5.17 **Final Trimming of Work**

The work to be done under the Contract shall include such repair work as may be necessary to overcome such deterioration as may occur on some portions of the work while other portions of the work are being performed. The project shall be in a neatly trimmed and well finished condition throughout at the time of completion and acceptance.

Article 5.18 **Cleaning Up**

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

Upon completion of the work and before acceptance and final payment will be made, the Contractor shall clean up the right-of-way and all properties on which he has operated in the construction of the project, including removing all construction equipment, removing and disposing of all discarded materials, rubbish, and debris. He shall tear down, remove, and dispose of all construction plant structures erected by or for him or by or for his Subcontractors or employees on the right-of-way or on property controlled by the City. He shall do all things necessary to put the whole of the right-of-way and such other property controlled by the City as he may occupy, in a neat, clean, and orderly condition. It is further understood and agreed that any such equipment and material of all kinds belonging to the Contractor that is not removed, as herein provided within thirty (30)

days after the date upon which all other work to be done under the Contract is completed, or within such longer times as may be agreed upon in writing between Contractor and the Engineer, shall become the property of the City without obligation to the Contractor or to any party to whom he may transfer title.

Nothing in the above clause shall be construed as relieving the Contractor from his obligation to clean up the right-of-way and the sites of his operations and to remove and dispose of debris, waste materials, etc., in accordance with other provisions of the Contract.

All street or traffic control signs, mailboxes, newspaper boxes, property corner markers, survey monuments, and utility markers removed to facilitate or damaged by the Contractor's operations shall be restored by the Contractor unless otherwise directed.

Article 5.19 Easements and Rights-of-Way

The City will provide the work limits, right-of-way and/or easements for the work. Information regarding the width and status of easements is shown on the plans; special conditions pertaining to easements are listed in the SPECIAL PROVISIONS. The Contractor shall confine his operation to the designated easement areas and observe all restrictions.

The Contractor will be responsible for any trespass upon adjacent property or injury thereto, resulting from or in connection with his operations. The Contractor shall be liable for any claims that may be made on account of trespass or damage of any kind to private property, and shall provide written certification of full restoration or satisfactory arrangements prior to final acceptance of the work. The Contractor shall not have the right to remove material from a right-of-way, easement or work area unless otherwise provided in the Contract Documents.

Should the Contractor desire to go outside the existing right-of-way or easement to operate his equipment, stockpile material, or intrude on private property with any phase of the construction, the Contractor shall provide the City with written permission from the property owner before entering onto such property.

The written permission shall specifically provide that the property owner will not hold the City liable for use of or damage to his property. The Contractor shall be held liable for any trespass and property damage incurred outside of the easement area.

The City will attempt to contact property owners and request that they remove personal property within the right-of-way prior to the beginning of construction. However, when fences, trailers, sheds, oil barrels, machinery, mailboxes and other miscellaneous personal property have not been removed and which interfere with construction, the Contractor shall remove these items of personal property from the right-of-way or easement to the property owner's lot or as directed by the Engineer. Any damage to the above items as a result of construction under this Contract will be repaired or the item replaced in kind by the Contractor. Care shall be exercised so that the property owner is inconvenienced as little as possible when items are removed. In the case of interrupting fuel services from

oil barrels, service shall be restored to the property owner immediately after moving the barrel.

Article 5.20

Unauthorized and Defective Work

Any work, not in accordance with the plans and specifications whether the result of poor workmanship, or defective materials, found to exist during construction or within one (1) year of final acceptance by the City shall be removed immediately and replaced by work and materials which shall conform to the specifications, or shall be remedied otherwise in an acceptable manner authorized by the Engineer. Work done contrary to the instructions of the Engineer, or beyond the lines shown on the plans, or any extra work done without authority, will not be considered as authorized and will not be paid for by the City. Work so done may be ordered by the Engineer to be removed or replaced at the Contractor's expense.

If the Contractor fails to correct unauthorized or defective work, the Owner may, three (3) days after a written notice to the Contractor, correct such deficiencies and deduct the cost thereof from any payment due the Contractor without prejudice to any other remedy.

Article 5.21

Additional or Extra Work

Upon the written order of the Engineer, the Contractor shall perform such additional or extra work that may or may not be included under or covered by Contract prices, as may be necessary for the satisfactory completion of the project. If the work is of a kind for which a specification is given herein, it shall be performed in accordance with that specification subject to any supplemental or additional specifications, plans and instructions as the Engineer may issue. If the work is of a kind not covered by a specification given herein, it shall be performed in accordance with such requirements as may be issued by the Engineer.

The City will pay for additional or extra work at the stipulated unit prices, or at the stipulated lump sum prices given in the Bid form, or on a force account basis as described in these specifications. Payment for extra work will be made only when it has been authorized by the Engineer in writing prior to performance of the work. In the case of a negotiated proposal the Contractor shall furnish a price breakdown with his proposal itemized as required by the Engineer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all materials, labor, equipment, subcontract and overhead costs as well as profit and shall cover all work involved to accomplish the modification, whether deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification thereof shall also be furnished. The proposal together with the price breakdown and time extension justification shall be furnished by such date as may be specified by the Engineer.

Article 5.22

Claims for Damage or Extra Work

a. City:

If the Contractor shall claim compensation from the City for any injury or damage sustained by reason of any acts of the City or its agents, he shall, within five (5) days after the act causing (sustaining) such damage, submit a written statement of the nature of the damage sustained, to the Engineer. The notice to the Engineer shall state that the Contractor intends to hold the City liable for such damages and shall set forth substantially the time and place of the injury or damage, the manner in which it occurred, the nature of the act or occurrence in question, the extent of the injury or damage so far as known, and the names and addresses of witnesses known to the claimant. Any notice required by (a) of this section shall be under oath or affirmation. Failure to give notice of injury or damage as required by (a) of this section or failure to present a claim within the time and in the manner provided therein shall bar any action upon said claim.

b. Extra Cost:

If the Contractor claims that any instructions by drawings or otherwise involve extra cost or any extension of time, he shall notify the City in writing within ten (10) days after the receipt of such instructions and in any event before proceeding to execute the work. No such claim shall be valid unless made in accordance with the terms of this section.

c. Claims for Weather:

The Contractor shall have no claims against the City for damages for any injury to work, materials, or equipment, resulting from the action of the elements. If, however, in the opinion of the Engineer, the Contractor has made all reasonable efforts to protect the materials, equipment and work, he may be granted reasonable time to make proper repairs, renewals and replacements of the work.

Article 5.23

Prosecution of Work

The work to be done under the Contract shall not commence until written "Notice to Proceed" has been received by the Contractor.

Performance of the work to be done under the Contract shall be commenced within ten (10) days after receipt of written "Notice to Proceed" from the City, unless later commencement of the work is authorized by the Engineer.

From time of commencement of the work to the time of completion, the work shall be prosecuted vigorously and continuously and always in accordance with a schedule which will insure completion within the specified time limit. There shall be no voluntary shutdown or slowing of operations without prior approval of the Engineer. Limitations of operations due to weather conditions will be governed by *Article 5.28 Limitations of Operations*.

If it appears to the Engineer that the rate of progress being made is not such as will insure the completion of the work within the specified time limit, it shall be within the authority of the City, upon notification by the Engineer, to require the Contractor to provide additional equipment and men and to take such other steps as may be necessary to insure completion as specified.

Article 5.24 **Progress Schedule and Requirements for Overtime Work**

a. Schedule:

The Contractor shall, within five (5) days or within such time as determined by the Engineer, before commencement of the work, prepare and submit to the Engineer for approval a Construction Progress Schedule in the form of a time-scaled bar chart showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features, including procurement of materials, plant and equipment and the contemplated dates for completing same. This schedule shall be named the “As Planned” schedule and shall indicate appropriately the percentage of work scheduled for completion at any time. The Engineer may upon written request require the Contractor to submit an updated progress schedule at any time during the Contract but not more often than once a month. All subsequent schedules shall be measured against the “As Planned” schedule.

b. Forces:

The Contractor shall furnish sufficient forces, construction plant and equipment and shall work such hours, including night shifts and overtime operations, as may be necessary to insure the completion of the work in accordance with the approved “As Planned” progress schedule. If the Contractor’s actual progress fails to meet the “As Planned” construction schedule, the Contractor shall increase its work force and equipment as required to bring the actual progress of its operations into conformance with said schedule without additional cost to the Owner.

Article 5.25 **Unusual Working Hours**

The Contractor shall give the Engineer twenty-four (24) hours advance notice of his intention to work overtime, nights, Sundays, or holidays, or any time outside the usual working hours. In no case will the Contractor do any such work without first notifying the Engineer to permit arrangements for proper inspection.

Article 5.26 **Subletting or Assignment of Contract**

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:

The Contractor shall notify the Engineer in writing of the names of all 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 the Contractor will take immediate steps to correct the performance of the Subcontractor.

Subletting by Subcontractors shall be subject to the same regulations. The City will not approve of the subcontracting of more than fifty percent (50%) of the work to be done under the Contract.

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

Insofar as is practicable, the Contractor shall make payment for Subcontract work in the same units and on the same basis of measurements as apply under the main Contract. The City will not be responsible for loss resulting from the Contractor's failure to do so. In making payment to Subcontractors, the Contractor shall protect himself against the possibility of overpayment and he shall assume such losses as may result from overpayment.

Article 5.27 **Assignments**

The Contractor shall not assign the Contract or assign any monies due or to become due under the Contract without previous written consent of the City. No assignment of the Contract by the Contractor shall be valid unless it contains a provision wherein funds to be paid to the assignee under the assignment are subject to all the Contractor's obligations under the Contract.

Article 5.28 **Limitations of Operations**

Operations on the various units or portions of the work shall be conducted during the times and at the locations specified in the Contract Documents or as may be approved by the Engineer. No part of the work shall be undertaken without his approval, and no work shall be carried on contrary to his instructions.

In an emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorization from the Engineer, is authorized to act, at his discretion, to prevent such threatened loss or injury; and he shall so act if instructed to do so by the Engineer. Any compensation claimed by the Contractor on account of such emergency work, shall be processed according to *Article 5.21, Additional or Extra Work*.

The Contractor shall not perform excavation, backfill or other earthwork when weather conditions are such that the desired grades, tolerances, compactions or other performance standards as outlined in these Contract Documents cannot be met.

When unfavorable weather makes it impractical to secure desired results, the Contractor may request from the Engineer a written order to suspend work, in whole or in part, for an intermittent or extended period of time. The period of the suspension will be taken into consideration in determining the revised date for completion. It shall be the Contractor's responsibility to maintain and protect the work and provide for traffic flow during intermittent shutdowns. The City may assume maintenance during extended shutdowns and shall be governed by the provisions of *Article 5.14, Suspension of Work*.

Article 5.29 **Workmen and Equipment**

The Contractor shall employ only competent and efficient laborers, mechanics, or artisans. Whenever, in the opinion of the Engineer, any employee is or becomes unsatisfactory for the work assigned to the employee, the Contractor shall, upon written request of the Engineer, remove said employee from the work.

The Contractor shall furnish to the Engineer, upon request, a list of all equipment, tools, and machines to be utilized to perform the work under this Contract, in his possession or available to him. Said equipment, tools, and machines shall be subject to inspection by the Engineer, shall comply with applicable safety regulations, and shall be maintained in a satisfactory and safe working condition at all times.

If the Contractor does not promptly repair or replace non-complying equipment, tools, or machines utilized in the Work, the City may terminate the Contractor's right to proceed.

Article 5.30 **Time of Completion of Work and Extension of Time Limit Including Liquidated Damages**

Time is of the essence in the Contract. Therefore, the work to be done under the contract shall be completed in its entirety within the time specified in the bid; provided however, that the Engineer may at his discretion recommend that the City extend the time for completion of the work without invalidating any of the provisions of the Contract and without releasing the surety.

Extensions of time, when recommended by the Engineer, will be based upon the effect of delays to the project as a whole and will not be recommended for non controlling delays to minor portions of the work unless it can be shown that such delays were the direct cause of the delay in the progress of the project as a whole. Governmental regulations, priorities, labor disputes, strikes, fires, and required "Extra Work" may constitute such a delay; in addition, Federal government restrictions arising out of the National Defense or War Program and resulting in inability to obtain materials, equipment, or labor may constitute such a delay.

Change in plans and increases in the quantities of work to be performed will be considered cause for extension of time only when they are of such nature and when they occur at such times that they materially and necessarily affect the completion time of the project.

The liquidated damage amount shall not cover any damages or expenses the Owner may incur as a result of the Contractor's unexcused delay in completing any portion or all of the project, which delay results in whole or in part in delay, disruption, hindrance, interference, damages or expenses to any third party. The Contractor shall remain liable for the full amount of any such delay, damages or expenses suffered by any third party without limitation by any liquidated damage provision set forth in this Contract.

Delay caused by failure of the City or its representatives to act promptly in the carrying out of its obligations and duties under the Contract will be considered cause for extension of time only when and to such extent as such failure actually prevents completion of the work within the specified time.

Time extensions requested by the Contractor shall be made to the Engineer in writing within ten (10) days of the date on which the alleged delay is said to have occurred and any claim for extension of time shall state explicitly the reasons therefor.

Should the Contractor fail to file such written claim for extension of time within the period provided therefor, he thereby shall have abandoned any claim therefor.

In naming the prices for completion of the work within the time specified it shall be understood and agreed the work shall be completed within that time. If, however, said work is not completed within the time named in the Contract, as extended to cover the total days of delay allowed in the paragraphs above, the City may deduct and retain as liquidated damages out of any sum then due the Contractor at time of such delinquency, or later, the sum of \$350/day unless otherwise specified in the Contract for each and every calendar day that the date of final completion of each Contract is delayed. In submitting a bid and signing the Contract, the Contractor thereby shall have agreed to these provisions and, furthermore, that the sum deducted and retained is not a penalty but a reimbursement to the City for damages which the city will have sustained by reason of such delayed completion. Damages so liquidated are understood to include the additional cost to the City for engineering supervision, interest charges, overhead, and other indirect costs.

The amount due the City from the Contractor under the foregoing provisions shall be deducted from any monies then due or to become due said Contractor under the Contract, and such deductions shall not in any degree release the Contractor from further obligations in respect to the fulfillment of the entire Contract, nor any right which the City may have to claim, sue for, and recover compensation and damages for nonperformance or breach of Contract.

Article 5.31 Termination of Contract by City

If the Contractor should be adjudged as 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 should fail to supply enough properly skilled workmen or proper materials for the efficient prosecution of the work, or if he should fail to make prompt payment to subcontractors for material or persistently disregard laws, ordinances, or the instruction of the Engineer, or otherwise be

guilty of a substantial violation of any provisions of the Contract, then the City, upon the certificate of the Engineer that, in his opinion, sufficient cause exists to justify such action, 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 services of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method it may deem expedient.

In the event such action is taken by the City, the Contractor shall not be entitled to receive any further payment until the work is completed. On completion of the work, determination shall be made by the Engineer of the total amount the Contractor would have been entitled to receive for the work under the terms of the Contract, had he himself completed the work. If the difference between said total amount and the sum of all amounts previously paid to the Contractor, which difference will hereinafter be called the "unpaid balance," exceeds the expense incurred by the City in completing the work, including expense for additional managerial and administrative services, such excess will be paid to the Contractor, with the consent of the Surety. If, instead, the expense incurred by the City exceeds the unpaid balance, the amount of the excess shall be paid to the City by the Contractor or his Surety.

The expense incurred by the City as herein provided, and the damage incurred through the Contractor's default, shall be as determined and certified by the Engineer.

In addition to and apart from the above mentioned rights of the City to terminate the Contractor, it is expressly understood that the Contract may be cancelled at the election of the City for any willful failure or refusal on the part of the Contractor to faithfully perform the Contract according to all of its terms and conditions; provided, however, that in the event the City should cancel the Contract, neither the Contractor nor his surety shall be relieved from damages or losses suffered by the City on account of the Contractor's said breach of Contract.

It is understood and agreed that the City may, at its discretion, avail itself of any or all of the above rights or remedies and that the involving of any one of the above rights or remedies will not prejudice or preclude the City from subsequently invoking any other right or remedy set forth above or elsewhere in the Contract.

In the case of termination of this Contract before completion from any cause whatsoever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of his equipment and supplies from the property of the City. Failure to do so will authorize the City to remove such equipment and supplies from its property at the expense of the Contractor.

Article 5.32 **Termination of Work for City's Convenience**

At any time during the term of this contract, the City 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 City. Any such termination shall be effected by delivery of a Notice of Termination to the Contractor, specifying that the termination is for the convenience of the City; the

extent to which performance of the work under the Contract is terminated; and the date upon which such termination becomes effective.

After receipt of a Notice of Termination 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 of 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 City.
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 City 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 City orders termination of work, effective on a certain date, all completed units of work within each pay item as of that date will be paid for at the contract unit price. Payment for materials included in the material inventory described in item 5 above will be paid at actual cost delivered to the project or storage site, including transportation charges. Allowable total markup on the actual cost shall be 15%.

After receipt of a Notice of Termination, the Contractor shall submit to the Engineer his claim for alleged additional damages or cost not covered above or elsewhere in these specifications as provided in *Section 10.05 Article 5.22 Claims for Damage or Extra Work*. In no event, however, will loss of anticipated profits be considered as part of any settlement.

Article 5.33**Use of Completed or Uncompleted Portions**

The City shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired, and such taking and use shall be deemed an acceptance of that work completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the completion of uncompleted work or causes refinishing of completed work, the Contractor may be entitled to extra compensation, or extension of time or both. Claims for additional compensation shall follow procedures set forth in *Article 5.22 Claims for Damage or Extra Work*. The City shall be responsible for routine maintenance or damages caused by its use of such portions of the Work.

Article 5.34**Contractor's Right to Stop Work or Terminate Contract**

If the work should be stopped under an order of any court, or other public authority, for a period of three (3) months, through no act or fault of the Contractor or of anyone employed by him or if the City should fail to pay the Contractor within thirty (30) days of its presentation, any sum certified by the Engineer and approved by the City, then the Contractor may, upon seven (7) days written notice to the City and Engineer, stop work or terminate this Contract and recover from the City payment for all work executed and any loss sustained upon any plant or materials and reasonable profit and damages.

Article 5.35**Disposal Sites**

Except as otherwise stated in the specifications, the Contractor shall make his own arrangements for and shall assume all costs in connection with disposal sites or areas. Any and all disposal sites or areas shall be in such locations and so maintained, that they shall be neither offensive nor become a menace to public health and welfare. Disposal sites must be approved by the City.

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

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

Article 5.36**Load Restrictions**

The Contractor shall comply with all legal road restrictions as set forth in "Alaska Oversize and Overwidth Permit Manual," current edition, and current revisions to Title 17, Chapter 25, of the Alaska Administrative code in the hauling of materials on public

roads beyond the limits of the project, and on all public roads within the project limits that are scheduled to remain in use upon completion of the project.

Any load restrictions applicable to roadway or structures within the project limits will be given in the special provisions. A special permit will not relieve the Contractor of liability for damage which may result from the moving of equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures or the roadway or to any other type of construction will not be permitted. No loads will be permitted on a concrete pavement, base, or structure before the expiration on the curing period. In no case shall legal limits be exceeded unless permitted in writing. The contractor shall be responsible for all damage done by his equipment.

Article 5.37 **Claims for Adjustments and Disputes**

If the Contractor becomes aware of any act or occurrence which may form the basis of a claim, he shall immediately inform the Engineer. 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. In addition, 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. Good cause shown shall include time for the Contractor to prepare his claim, and the Engineer shall grant an extension of not more than sixty (60) days for the preparation of the claim. The Contractor agrees that unless these written notices are provided, the Contractor will have no entitlement to additional time or compensation for any such act or occurrence. The Contractor shall, in all cases, continue diligent performance of the Contract.

In presenting the written claim, the Contractor shall specifically include the following:

- a.** The facts and circumstances surrounding the claim;
- b.** The Contract provisions under which the claim is made;
- c.** The bid items and quantities, if any, upon which the claim is based; and
- d.** The specific relief requested, including the additional compensation claimed and the basis upon which it was calculated or the additional time requested and the basis upon which it was calculated.

The Owner will render a decision on the claim within sixty (60) days of receipt of the full and complete written claim. Any change in the Contract sum resulting from such claim shall be authorized by Change Order.

This decision shall be final and conclusive unless it is fraudulent or unless the Contractor commences court action in the Court within the jurisdiction and venue provisions of the Contract within one hundred twenty (120) days from receipt thereof.

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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 as exist at present and those which may be enacted or promulgated by legislative bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the City and the officers, employees and agents (including the Engineer) of the City 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 Subcontractors or his employees.

Protection of Water Resources. The Contractor shall control the disposal of fuels, oils, bitumens, calcium chloride, acid or harmful materials, both on and off the premises, and shall comply with applicable federal, state, and municipal laws concerning pollution of waterways while performing work under this Contract. Special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, and sewage from entering established drainages.

Article 6.2 Permits

The Contractor will obtain all licenses necessary to perform the Work and will obtain all necessary permits except those that the Owner will obtain. The Owner will obtain all those permits which may be necessary for approval of the project including permits from the U.S. Corps of Engineers, U.S. Fish and Wildlife Service, State Department of Fish and Game, State Department of Environmental Conservation and the State Department of Transportation unless otherwise specified in the special provisions. All permits and licenses, either temporary or permanent, which are required by the Federal government, the State of Alaska, the City of Homer, or any other government unit, including public utilities, which are necessary for the prosecution of the work shall be obtained and shall be paid for by the Contractor except for water connect permit fees which shall be paid by the City. This requirement shall be binding upon the Contractor although the prosecution of the work may be in the hands of a Subcontractor. It shall be the Contractor's responsibility to secure all permits and licenses, either temporary or permanent, to give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as specified herein. The Contractor shall also be responsible for requesting all code compliance inspections.

For work to be performed within the State rights-of-way, a utility permit which authorizes the use of State rights-of-way for location of the utility, will be obtained by the City. Prior to award of the Contract, the apparent low bidder shall obtain from the applicable agency approval for the method, plans and schedule of construction for any work to be performed within the right-of-way.

Before starting the work, the Contractor shall apply for a construction permit which will outline specific methods and procedures. The permit will be issued to the Contractor by the applicable agency prior to the start of any work within the concerned rights-of-way. In all cases a valid construction permit must exist while the Contractor is working within rights-of-way of the State. Failure on the part of the Contractor to comply with any or all stipulations set forth in the construction permit shall be sufficient cause for the City to suspend the Contractor from working within the rights-of-way of the State.

Article 6.3 **Patented Devices, Materials, and Processes**

The Contractor assumes the responsibility of defending any and all suits or actions brought for the infringement of any patent claimed to be infringed by any material, device, plan, method or process to be incorporated in the work and/or required to be used in connection with the work to be done under the Contract, including all attorney's fees and court costs, and he shall indemnify and save harmless the City, the officers, employees, and agents (including the Engineer) of the City from all claims of and suits or actions for infringement of patents.

Article 6.4 **Sanitary Provisions**

The Contractor shall observe all rules and regulations of the State and local health officials, and shall take such precautions as are necessary to avoid creating conditions which are not sanitary. The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for use of his employees as may be necessary to comply with the requirements of public health officials. He shall permit no public nuisance at any place over which he has control.

Article 6.5 **Industrial Safety**

a. Safety Precautions and Programs

The Contractor alone shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

1. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.
2. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.
3. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the work,

the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

4. The Contractor shall develop and maintain, for the duration of this Contract, a safety program that effectively incorporates and implements all required safety provisions.
5. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent, unless otherwise designated by the Contractor, in writing, to the Owner and Engineer.
6. Acts of the Owner or Engineer in conducting construction review of the work is not intended to include any review or approval of the accuracy or performance of the Contractor's safety supervisor, the safety program, or any safety measures taken in, on, or near the construction site.
7. The Contractor shall not load or permit any part of the construction site to be loaded beyond its safe structural capacity.

b. Safety of Persons and Property

The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons (including its employees and the public) and property in connection with the performance of the Contract.

The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All employees on the work and other persons who may be affected thereby;
2. All the work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

c. Financial Responsibility for Injury, Loss, or Damage

Damages resulting from personal injury (including death) or loss to any property caused directly or indirectly, in whole or in part, by the Contractor, any subcontractor, supplier, or any other person or organization directly or indirectly employed by any contractor, subcontractor, or supplier to perform or furnish any of the work, or anyone for whose acts any of them may be liable, shall be remedied by the Contractor with no change in the contract price or contract time, except such damage, injury, or loss attributable to

unforeseen causes beyond the control of and without the fault of or negligence of the Contractor, including but not restricted to acts of God, of the public enemy, or governmental authorities.

The Contractor's duties and responsibilities for the safety and protection of the work shall continue until final acceptance, except as otherwise expressly provided in connection with substantial completion. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under *Article 6.15 Responsibility for Damages*.

d. Emergencies

In emergencies affecting the safety or protection of persons or the work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the City, is obligated to act to prevent threatened damage, injury, or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the work or variations from the contract documents have been caused thereby. If the City determines that a change in the contract documents is required because of the action taken in response to an emergency, a contract change will be authorized by one of the methods indicated in the Contract, as determined by the Engineer.

e. Notice and Reporting

If death, serious injury, or serious damage occurs on the job site, such incident shall be reported immediately by the telephone or messenger to both the Engineer and the Owner. The Contractor shall thereafter submit a written report to the Engineer and Owner within three days of the occurrence. The Contractor also shall promptly report, in writing, to the Engineer all accidents whatsoever arising out of or in connection with the performance of the work, whether on or adjacent to the site, giving full details and statements of witnesses. If a claim is made by anyone against the Contractor or any subcontractor on account of any accident or incident, the Contractor shall promptly report the facts, in writing, to the Engineer, giving full details of the claim.

Article 6.6

Public Safety

The Contractor shall conduct the work in a manner that minimizes the inconvenience to traffic on intersections and connecting streets and to persons conducting commercial enterprises or residing along the route of the work.

Entrances to residences, garages, service stations, business places, and driveways of all kinds shall not be blocked. Temporary bridges, ramps or culverts shall be provided and maintained at entrances to properties where vehicular traffic is necessary and shall be adequate in width and strength for the service required. Satisfactory means of ingress and egress for persons residing or having occasion to transact business along the route of the work shall be maintained at all times. All work involved in providing for construction, maintenance, and use of private roads or driveways, etc., shall not be paid for directly but shall be considered a subsidiary obligation of the Contractor covered under other Contract items. Proper notification and arrangements thereof for interruption

of such access shall be the responsibility of the Contractor. All culverts, private or otherwise, which are disturbed will be replaced or repaired at the expense of the Contractor.

Article 6.7

Traffic

It will be the Contractor's responsibility to maintain all detour routes, haul routes, and streets under construction. This includes grading, dust control and minor drainage work necessary to keep the streets or roads in good condition throughout the construction period. Detour routes and haul routes must be approved by the Engineer in advance and shall be left in a condition at least equal to their condition immediately prior to being opened by the Contractor.

The Contractor shall, at his own expense and without further orders, provide, erect, and maintain barricades, fences, signs, flagmen, flags, torches and lights as may be necessary or as may be ordered by the Engineer to insure the safety of the public as well as those engaged in connection with the work. All regulatory signs, warning signs, guide signs, barricades, direction arrows, and route markers will conform to the provision of Section 5 of the "Manual of Uniform Traffic Control Devices" (published by U.S. Government Printing Office). Traffic control devices must be set up prior to the start of construction or maintenance operations and shall be properly maintained during the time such special conditions exist. When no longer required, they shall be removed. Where operations are performed in stages, only these devices which pertain to the stage in progress shall be visible. When traffic control devices do not apply, they shall be covered or out of the view of traffic. All traffic control devices shall be kept in proper position, clean, and legible at all times. All barricades and sign supports shall be neatly constructed and shall not appear makeshift or hastily thrown together. They shall be repaired, cleaned or repainted as needed to keep up their appearance. Oil burning torches shall not be placed so close to signs or barricades as to scorch them or deposit soot on them.

Special care shall be taken to see that weeds, shrubbery, construction material or equipment, and spills are not allowed to obscure any sign, light or barricade. All barricades and signs will be illuminated one-half hour before sunset to one-half hour after sunrise.

It shall be the Contractor's responsibility to maintain all barricades, flags, torches or lights throughout the night hours, weekends, holidays, or other periods of inactivity and to check these warning devices at least once every eight (8) hours to assure that they are in the proper position and are operating properly.

The Contractor shall also inform the Engineer, in writing, of the name(s) and phone number(s) of the person(s) who is (are) personally responsible for the maintenance of the warning devices. In the event of an emergency when this (these) person(s) cannot be reached, the City reserves the right to take appropriate precautions. If it becomes necessary to exercise this right by having the City's forces, or others, erect the necessary barricades, torches or lights, the Contractor shall be charged a minimum of \$100 for each such trip to the job site. Such charge will be deducted from any payment due the Contractor. Charges in excess of \$100 shall be determined by the amount of equipment

and men necessary for the work to be done. Action by the City to erect barricades, signs or lights does not relieve the Contractor of his indemnification obligation set forth in safety responsibilities set forth in *Articles 6.5 and 6.15*.

Streets will be closed only as approved by the Engineer. The Contractor shall so conduct his operations as to offer the least possible inconvenience to the public, and he shall have under construction no greater length or amount of work than he can prosecute properly with due regard to the rights of the people. Local traffic shall be provided access to private properties at all times unless otherwise approved by the Engineer. Emergency traffic such as police, fire, and disaster units shall be provided reasonable access at all times. No two adjacent parallel streets may be closed to emergency traffic at one time. The Contractor shall give the Engineer forty-eight (48) hour advance notice (excluding Saturdays, Sundays, and holidays) before closing any street or performing major work on these streets. It will be the Contractor's responsibility to notify the Engineer daily of any change in plans to close or open any street or alley regardless of the length of time the street or alley is to be closed or opened.

Special pedestrian detours are often necessary in areas adjacent to new construction or demolition of existing structures. The Engineer shall determine when walkways are required. Plans for walkways must be approved by the Engineer.

Since it is not practical or possible to prescribe detailed standards of application for the many diverse maintenance and construction activities that might conceivably arise, modifications of the traffic control requirements and sign size may be required to fit special circumstances.

Article 6.8 **Barricades, Warning Signs, and Flagmen**

The Contractor shall at his expense and without further or other orders provide, erect and maintain at all times during the progress or temporary suspension of the work suitable barricades, fences, signs, or other adequate warnings or protection, and shall provide, keep and maintain such danger lights, signals, and flagmen as may be necessary or as may be ordered by the Engineer to insure the safety of the public as well as those engaged in connection with the work. All barricades and obstructions shall be protected at night by signal lights which shall be suitably distributed and illuminated from sunset to sunrise. Barricades shall be of substantial construction and shall be suitably painted to increase their visibility at night.

If flagmen are necessary for the purpose of protection and safety to traffic, such flagmen shall be furnished at the Contractor's expense. The signs to be furnished and used by the Contractor in directing, controlling and safeguarding traffic shall conform with the standard sign designs specified in the Manual of Uniform Traffic Control Devices, 2003 edition or subsequent editions.

The Contractor's responsibility for the safeguarding of traffic as specified above shall cease when the work included in the Contract is accepted as complete.

Article 6.9**Drainage**

The Contractor shall provide and maintain all water courses, gutters and drains which are interrupted by his work and shall replace all in as good condition as he found them.

Article 6.10**Air and Water Pollution Laws**

The attention of the Contractor is called to statutes of the State and City relating to the pollution of water and air. The Contractor shall carry out his operations in conformity with the applicable sections of State and City statutes and all regulations which are adopted pursuant thereto.

Article 6.11**Safeguarding of Excavations**

The Contractor shall provide such safeguards and protections around and in the vicinity of the excavations he makes as may be necessary to prevent and avoid the occurrence of damage, loss, injury and death to property and persons because of such excavations. Liability for any such damage, loss, injury or death shall cease when all work done under the Contract is completed and accepted by the City, except as otherwise noted.

Article 6.12**Use of Explosives**

Unless provided for in the Special Provisions, the use of explosives will not be permitted.

Article 6.13**Utilities****a. Plans:**

Locations of utilities shown on the drawings are not exact. The Owner shall not be held liable for damages to utilities incurred during construction due to deficiencies or omissions of the Drawings or these provisions. At least 48 hours prior to commencing work, the Contractor shall contact all local utility companies to obtain underground locates and shall protect the utilities:

The Contractor shall notify the utility companies of any damage and shall have repaired, at his own expense, any damage to underground utilities and structures where such damage is due to the failure of the Contractor to properly inform himself beforehand of the probable existence and location of underground utilities, or where such damage is due to the failure of the Contractor to exert due care and caution in his construction operations.

b. Protecting Utilities:

Whenever the construction is within the area of other public utilities (water, sewer, electrical, communications, or gas, overhead or underground) and the utility has to be temporarily raised, lowered, guyed, shored or braced or otherwise protected during construction, it shall be done at the expense of the Contractor and shall be included in the contractor's Bid price for that item of work in place. If construction endangers support of

communication or power poles, the agency having jurisdiction shall be notified and the poles shall be adequately protected to the satisfaction of the agency at the expense of the Contractor, before construction is started.

c. Changing Location of Utilities

It is the intent of the plans that no utilities will be moved to facilitate construction of the improvements provided for in this Contract, except as otherwise noted on the plans or in the specifications.

The Engineer shall not determine that an existing utility must be moved unless it cannot be guyed, shored, braced or by-passed by ordinary construction procedures. However, if it will be moved by the utility company having jurisdiction over the utility, it will be done at no charge to the Contractor. The Contractor shall be solely responsible for coordinating his work schedule with any relocation work of the utility company. If the work of the Contractor is delayed because of any delays, acts or omissions caused by the utility company in its relocation work, the Contractor shall have no claim against the City for that reason, other than for an extension of time equal to that of the delay in which to complete the Contract.

d. Exposed Utilities

Whenever a line of communication or electrical underground cable conduit, conduit bank, or gas line is to be exposed and the exact location and depth is not known, the utility company shall be notified and excavation by the Contractor shall not be started until a representative of the utility company is present to aid the Contractor in the location of the utility. Wherever a utility is exposed, it shall be backfilled with original material unless otherwise specified by the Engineer. All utilities, cable ducts, pipes or poles encountered must be adequately supported to prevent breakage or fatigue.

e. Utility Locate Requirement:

Upon receipt of written notification from any of the public agencies listed in this paragraph that the Contractor has caused damage to any facility, equipment or installation of that agency and that the Contractor failed to request a locate service at least two (2) normal business days prior to the damage, or if the locate service was properly requested, that the damage was not proximately caused by an error in the locate service, the City of Homer will withhold from forthcoming Contract payments, including advances, an amount sufficient to cover the damage. The term "normal business day" means the hours between 8:00 a.m. and 5:00 p.m., Monday through Friday. The amount sufficient to cover the damage shall be designated by the agency providing notification of damage and may include the total cost of repair, including overhead, and three hundred dollars (\$300.00) to cover legal expenses.

Article 6.14

Utilities – Connections

Whenever the plans and specifications require connections to be made to City or privately owned utility lines or services, the Contractor shall, unless otherwise specified

in the special provisions, be responsible for making the connection to the utility line, or have the utility company make the connection, at the point(s) indicated on the drawings. The Contractor shall be responsible for making all necessary applications to the utility company, for paying all fees and for performing any work associated with making the connections which is not performed by the utility company. The Contractor is not responsible for bringing utility lines to the point of connection. The Contractor shall pay all costs for utility service prior to the Date of Substantial Completion.

Article 6.15 **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 to be done under this Contract.

The Contractor shall indemnify and save harmless the City, its officers and employees, from all suits, actions, or claims of any kind brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the said Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any claims or amounts recovered from any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Workman's Compensation Act," or any other law, ordinance, order, or decree; and so much of the money due the said Contractor under and by virtue of his Contract as may be considered necessary by the City for such purpose, may be retained for the use of the State; or, in case no money is due, his surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the City.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract.

Article 6.16 **Restoration of Damaged Property**

All damage and injury to property that may be caused or that may result from the carrying out of the work to be done under the Contract, or from any act, omission or neglect of the Contractor, his Subcontractor, or his employees, shall promptly be made good by the Contractor either by the repairing, rebuilding, or replacing of the property damaged, or in some other manner satisfactory to the City of such property. In case of failure on the part of the Contractor to promptly and satisfactorily make good such damage or injury, the City may, without notice to the Contractor, proceed to repair, rebuild, or replace such property as may be deemed necessary, and the cost thereof will be deducted from any monies due or which may become due the Contractor under the Contract.

In applying the provisions stated above, 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.

Article 6.17 **Contractor's Responsibility for Work**

Until final acceptance of the Contract, the Contractor shall be held responsible for any injury or damage to the work or to any part thereof by the action of the elements, and he shall make good at his own expense all injuries or damages to any portion of the work before its completion and final acceptance.

Article 6.18 **Insurance**

a. General:

Before the execution of the Contract, the Contractor shall obtain all insurance required under this section; nor shall he allow any Subcontractor to commence work until the Subcontractor also has obtained similar insurance applicable to his work. The Contractor shall maintain insurance throughout the life of this Contract including the guarantee and maintenance period.

Proof of the required insurance shall be provided to the City in the form of a Certificate of Insurance, showing the type and the amounts of insurance, the policy number, expiration date and signed by an authorized representative of the insurance company. Each Certificate of Insurance shall state that the policy or policies have been endorsed whereby the insurance company will provide not less than thirty (30) days written notice to the City of any material change, cancellation, or non-renewal of the insurance policies. All insurance policies required under this Article shall name the City as an additional insured for the purposes of the Project and shall contain a waiver of subrogation against the City.

The Contractor, its principals, partners, employees, agents, representatives, heirs or assigns, hereby agrees to protect, defend, save harmless and indemnify the City, its officials, employees and authorized representatives or its successors against any loss, cost, damage, suits, expense, judgment or liability of any kind whatsoever from or by reason or on account of, as a result of work or activities or any nature whatsoever arising directly or indirectly under this Contract including any claims for injury to person or property or death to the parties or to employees of the Contractor or its principals or of the City.

The Contractor shall purchase and maintain appropriate insurance for maritime employees subject to Federal jurisdiction including both the United States Longshoremen and Harbor Workers Compensation Act and Federal Maritime Employers Liability Law (Jones Act).

b. The Contractor shall provide the following types of insurance:

1. <u>Worker's Compensation</u>	<u>Minimum Limits</u>
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Employer's Liability and Workers' Compensation as required by Alaska State Workers' Compensation Statutes.	Statutory
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U.S. Longshoremen & Harbor Workers' (USL&H) if required.

2. <u>Comprehensive General Liability</u>	<u>Minimum Limits</u>
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Single Limit	\$1,000,000
Aggregate	\$2,000,000

- Bodily Injury & Property Damage Liability
- Premises Operations
- Blanket Contractual
- Broad Form Property Damage
- Personal Injury
- Independent Contractors
- Collapse and Underground
- Professional Errors and Omissions if required in Instruction to Bidders

3. <u>Comprehensive Automobile Liability</u>	<u>Minimum Limits</u>
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Bodily Injury and Property Damage, including All owned, hired and non-owned vehicles	\$1,000,000
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c. Builder's Risk:

Builder's Risk Insurance may be required as specified in the special provisions.

Article 6.19 **Payment of Bills by Contractors**

The Contractor shall promptly make full payment for labor, material supplies and provisions, at such times as they become due and payable, to all persons supplying said Contractor or his Subcontractor with labor, services, materials, supplies or provisions for the prosecution of the work provided for in the Contract, and he shall not permit any lien or claim to be filed or prosecuted against the City for or on account of any labor, services, material, supplies or provisions furnished.

In the event that said Contractor fails, neglects, or refuses to make prompt and full payment of any claim for labor, services, materials, supplies or provisions furnished by any person in connection with the Contract as said claim becomes due, whether said labor, services, materials, supplies or provisions to be performed or furnished for said Contractor or for his Subcontractor, then, and in such event, the City may withhold the amount of such claim by the person or persons furnishing such labor, services, materials,

supplies, or provisions and deduct the amount thereof from funds, due or to become due said Contractor by the City as provided herein. The deduction for any such amounts because of claims in the manner herein authorized will not, however, relieve the Contractor or his surety from his or its obligations with respect to any unpaid claims. Sums withheld for the purpose named herein will be paid to the Contractor upon certifications that said claims have been paid. The City may, at its sole election and without liability to the Contractor or any third party, deposit any sums withheld pursuant to this Article 6.19 with the Clerk or Court for the Third Judicial District for resolution of the Contractor and his Subcontractor's competing claim to said sums. In no case shall the City make payment on any claim directly to the Subcontractor or supplier.

Article 6.20 **Suits of Law Concerning the Work**

Should a suit of law be entered into either by the Contractor or his Surety against the City or by the City against the Contractor or his Surety, the suit of law shall be tried in the judicial district of the state in which the work was or is to be performed.

If one of the questions at issue is the satisfactory performance of the work by the Contractor and should the appropriate court of law judge the work of the contractor to be unsatisfactory, the Contractor or his Surety shall reimburse the City for all legal and all other expenses (as may be allowed and set by the court) incurred by the City because of the suit of law and, further, it is agreed that the City may deduct such expense from any sum or sums then 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 6.21 **State of Alaska Prevailing Wage Scale**

The Contractor shall comply with the provisions of Title 36, Chapter 05 of the Alaska Statutes requiring the Contractor to pay not less than the current prevailing rate of wages.

The Contractor and his Subcontractors shall pay all employees unconditionally and not less than once a week. Wages may not be less than those stated in the advertised specifications regardless of the contractual relationship between the Contractor or Subcontractors and laborers, mechanics, or field surveyors. The scale of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the site of the work. The City may withhold so much of the accrued payments as determined by the State of Alaska Department of Labor, necessary to pay laborers, mechanics, or field surveyors employed by the Contractor or Subcontractor the difference between (a) the rates of wages required by the Contract to be paid laborers, mechanics, or field surveyors in the work, and (b) the rates of wages in fact paid to laborers, mechanics, or field surveyors when less than the wages required by the Contract.

If it is found that a laborer, mechanic, or field surveyor employed by the Contractor or Subcontractor has been or is being paid a rate of wages less than the rate of wages required by the Contract to be paid, the State or its Political Subdivision may, by written notice to the Contractor, terminate his right to proceed with the work or the part of the

work for which there is a failure to pay the required wages and to prosecute the work to completion by Contract or otherwise, and the Contractor and his sureties are liable for excess costs for completing the work.

Article 6.22

Equal Employment Opportunity

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

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SECTION 10.07 **MEASUREMENT AND PAYMENT**

Article 7.1 **Method of Measurement and Computation**

All work completed under the Contract shall be measured by the Engineer according to United States standard measures. The methods of measurement and computation to be used in the determination of the quantities of materials furnished and the quantities of work performed under the Contract shall be the methods outlined in these specifications or by those methods generally recognized as good engineering practice, which, in the opinion of the Engineer, give the greatest accuracy consistent with practicable application.

When any vehicle delivers to the project classified fill or backfill of any kind, bedding material, leveling course, or pavement materials, the driver of the vehicle shall give to the Inspector a legible “original” weight ticket with the following information:

1. Vehicle identification number.
2. Tare weight of the vehicle(s)
3. Gross weight of the loaded vehicle(s) as registered on the scale.
4. Sequential ticket number, date, pay item in words, and project location.
5. Pit location and name of scale operator

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

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

If, at the material source, the Contractor does not have 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 five items. No direct payment will be made for furnishing scale operator(s), equipment, and expendables required, the costs thereof being considered an incidental Contractor obligation. The accuracy of all scales, both private and commercial, is the responsibility of the Contractor. The Contractor shall maintain scales according to the specifications, tolerances and regulations for commercial weighing and measuring devices contained in the National Bureau of Standards, Handbook 44, as adopted by Alaska Statute, Section 45.75.50 (d).

Article 7.2

Scope of Payment

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

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

In this section, the terms “construct, 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

Quantities and Unit Price

a. Lump Sum

The Contractor shall include in the Contract sum all allowances named in the Contract Documents for items (or for the entire work) which are to be paid under a lump sum price and shall cause the work so covered to be done for such sums. Should the Engineer direct that additional work be required or work deleted under a lump sum price item, the Contract sum will be adjusted therewith by negotiation. No demand for expense or profit other than those included in the lump sum price will be allowed.

b. Unit Prices

The total amount to be paid under the Contract for items for which unit prices are named will be calculated on the basis of the unit prices named in the Bid for the quantities of work actually incorporated into the finished project.

Article 7.4

Payment for Force Account (Extra) Work

When extra work is ordered by the Engineer to be done on a force account basis by the Contractor, such work will be paid for on the basis of actual cost to the Contractor plus an allowance of twenty-five percent (25%) of actual cost for overhead and profit thereof, except for rental on equipment from others, authorized by the Engineer to be used on the

work in which case the allowance will be ten percent (10%.) On subcontract work the allowance to the Contractor for profit, superintendence, and general expense shall be ten percent (10%) of the Subcontractor's bill for such work performed. The percentage allowance to be made to the Contractor (or Subcontractor) will be made on all of the items as follows:

Actual cost for labor used in the work will be made at the rates actually paid plus direct overhead on labor such as but not limited to welfare or fringe benefit payments, social security, accounting, insurance, etc., to the laborers and foremen by the Contractor or Subcontractor unless these rates are in excess of the current local prevailing wage rates, in which event, payment will be made at the local prevailing wage rate. The time allowed will be the number of hours worked directly on force account operation.

Actual cost for purchased materials, equipment, and supplies used on force account work will be made at the prices billed to the Contractor or Subcontractor by the supplier, less all discounts. The Contractor or his Subcontractor shall take advantage of all possible discounts on bills for materials and supplies, and such discounts may be subtracted from the total amounts of bills regardless of any failure of the Contractor or Subcontractor to take advantage of same. Freight and express on materials and supplies will be considered to be a part of the cost and will be paid for as materials and supplies.

Materials and supplies produced by the Contractor or Subcontractor will be paid for at prices to be agreed upon between the Contractor and the Engineer, which prices will be no greater than the prices at which the materials and supplies can be obtained elsewhere.

Where the use of rental equipment is authorized by the Engineer, rental on such equipment used will be based on the rates actually paid by the Contractor or Subcontractor unless these rates are in excess of the current local rates, or unless the equipment is owned by the Contractor or Subcontractor, in either of which events payments will be made at the rates to be agreed upon between the Contractor and the Engineer prior to beginning work, which rates will in no case be greater than the current local rates.

For equipment rented on a daily or hourly basis, rental will be allowed for only those days or hours during which the equipment is in actual use. For equipment rented on a monthly basis, straight time rental will be allowed from the day the equipment is first used on the particular piece of force account work until and including the last day on which it is used on the particular work, provided the equipment is not used on other work during the period, and provided further that the equipment is not idle for a continuous period of more than six (6) days. No rental will be allowed for any parts of idle periods of lengths greater than six days or for any time during which the equipment is used on other work.

The rental allowed for equipment will in all cases be understood to cover all fuel, supplies, repairs, and renewals and no further allowance will be made for those items unless specific agreement to that effect is made in writing before the work is commenced. Individual pieces of equipment having a value of five hundred dollars (\$500) or less will be considered to be tools or small equipment, and no rental will be allowed on such.

The percentage allowances made to the Contractor in accordance with the terms outlined above will be understood to be reimbursement and compensation for all superintendence, use of tools and small equipment, overhead expenses, bond cost, insurance premiums, profits, indirect costs and losses of all kinds, and all other items of cost not specifically designated herein as items involved are furnished or incurred by the Contractor or by the Subcontractor. No other reimbursement, compensation or payment will be made for any such services, costs or other items.

Should any percentage allowance or other corresponding allowance be made by the Contractor to a Subcontractor (other than specified herein), in connection with force account work, such allowance shall be at the sole expense of the Contractor and the Contractor will not be reimbursed or otherwise compensated for the same by the City.

Only efficient and competent laborers and foremen shall be employed on force account work, and only tools and equipment in good condition and suitable for the work shall be used. The Engineer shall have authority to dismiss from force account work any laborer or foreman whose efficiency is, in his opinion, below that of the average of the Contractor's forces, and to refuse to allow the use of tools and equipment which, in his opinion, are not suitable for the work. Laborers and foremen dismissed and/or tools and equipment rejected shall be replaced by the Contractor to the satisfaction of the Engineer.

Article 7.5 **Force Account Bills**

Bills for force account work must show in payroll form the dates, names, hours worked each day, rates of pay, and amounts paid to each individual employed on such work, and must give in detail the nature of the work done by each. The equipment used, hours of operation and agreed rates must also be shown. Bills for materials must be fully itemized, showing dates of delivery, quantities, unit prices, amounts, and discounts, and must be accompanied by receipted invoices covering every item.

All bills for payment on force account work must be submitted in triplicate, must state the number of the Contract under which the work was performed, and must be approved by the Engineer. Failure to present an estimate within thirty (30) days after the close of the month in which the work covered was performed shall constitute a waiver on the part of the Contractor of his right to present such bill thereafter or to receive payment therefor.

Article 7.6 **Progress Payments**

During the progress of the work the Contractor may request progress payments for work done during the preceding calendar month. Such request must be accompanied by an updated progress schedule if requested by the Engineer. Progress payments may include reimbursement for materials stored at an approved site provided proof of payment by the Contractor is given.

No later than the tenth (10th) day of each month the Contractor shall furnish such data necessary for the engineer to make an estimate of the amount of work completed and of the value of such completed work including an estimate of the amount and value of

acceptable material to be incorporated in the completed work which has been delivered and properly stored at or near the site or at an acceptable location to the Engineer. With these estimates as a base, a partial payment shall be equal to the value of completed work as computed from the Engineer's estimate, plus the value of acceptable materials which are in a condition or state of fabrication ready to be incorporated in the completed structure and which are held in storage on or near the work, the value of such materials computed in accordance with these specifications, less such amounts as may be deductible or as may be owing and due the City for any cause, and less an amount to be retained in protection of the City's interests. The Contractor shall furnish prior to the submission of his first progress payment estimate, a breakdown on his lump sum Bid item or items which will be reviewed by the City as to propriety of distribution of the total cost to the various accounts.

Payments to the Contractor will be made no later than twenty-one (21) working days following submission of a properly completed pay request to the Engineer.

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

The making of partial payments 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.

At the time payment is made for any materials which have been stored at or near the site, the Ownership of such materials shall be vested in the City, and they shall remain in storage until used on the work. Such materials shall not be used on other work.

Until such time as the work is accepted by the City, retainage shall be withheld in accordance with the following schedule:

Contract Completion Percentage	Retainage Percentage
0 to 75%	10%
76 to 95%	5% *
over 95%	5% *

*May be reduced to these percentages depending upon satisfactory performance and adherence to the Contractor's progress schedule, clean-up, Contract completion cost and other factors, in the judgement of the Engineer.

The City shall pay Contractors interest on retainage in accordance with the special provisions.

The Engineer may withhold or, on account of subsequently discovered evidence, nullify the whole or any part of any payment certificate to such extent as may be deemed necessary to protect the City from loss on account of:

- a. Defective work not remedied.
- b. Claims as provided herein.
- c. Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- d. A reasonable doubt in the opinion of the Engineer that the Contract can be completed for the balance then unpaid.
- e. Damage to another Contractor or Subcontractor.
- f. Unsatisfactory prosecution of the work by Contractor.
- g. Errors in partial payment requests.
- h. Bankruptcy, receivership or insolvency of, or the pendency of such proceedings against the Contractor.
- i. Costs of the City for engineering or other work as provided in the Contract Documents to be reimbursed to the City by the Contractor.
- j. Failure of the Contractor to complete any part of the construction in accordance with the Construction Schedule.

Article 7.7

Advances on Materials

For materials delivered and held in storage upon the work site (or near the site of the work if approved by the Engineer), allowances will be made in the partial payments to the Contractor. These allowances shall be in amounts not exceeding one hundred percent (100%) of the net cost to the Contractor of the material f.o.b. the work site and from such allowances there shall be retained the percentages regularly provided for in connection with partial payments.

At the option of the Engineer, no allowances for materials shall be made on any partial estimate unless the total allowable value for all materials on hand is at least one thousand dollars (\$1,000) and no allowance shall be made upon any single class of material the value of which is not at least five hundred dollars (\$500). The inventory of materials for which advances are requested shall be kept to a reasonable size as approved by the Engineer. No allowance shall be made upon 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.

As a basis for determining the amount of advances on material, the Contractor shall make invoices available to the Engineer, together with evidence of payments, insurance, freight bills, and other information concerning the materials in question, as the Engineer may request. Should there be reasonable evidence, in the opinion of the Engineer, that the Contractor is not making prompt payments for material on hand, allowances for material on hand will be omitted from partial payment.

Article 7.8**Allowance for Materials Left on Hand**

Materials not required by the unit or lump sum prices named in the proposal but delivered to the work at the order of the Engineer but left unused due to changes in plans, will, if the materials are not practicably returnable for credit, be purchased from the Contractor by the City at an actual cost (without percentage allowance or profit), and shall thereupon become the property of the City.

Article 7.9**Final Estimate and Payment**

Upon completion of the work, final inspection, and issuance of a Certificate of Completion by the City, the Engineer will accept request for the Final Payment in accordance with the schedule outlined in *Article 7.6 Progress Payments*.

Final payment shall not be made until the Certificate of Compliance has been received as per *Section 10.08, Certificate of Compliance*, and an approved copy of the Departments of Labor's Notice of Completion has been submitted to the City.

Final payment shall be subject to the conditions of the Performance and Payment Bond, legal and contractual rights of the City, required warranties, and correction of faulty construction after final payment. The City shall have the right to retain from any payment then due the Contractor, so long as any bills or claims remain unsettled and outstanding, a sum sufficient, in the opinion of the City, to provide for the payment of the same. It is also understood and agreed that, in case of any breach by the Contractor of the provisions hereof, the City may retain from any payment or payments, which may become due hereunder, a sum sufficient, in the opinion of the City, to compensate for all damages occasioned by such breach, including in such damages any damages arising out of delay on the part of the Contractor.

Article 7.10**Suspension of Payments**

No partial or final payment shall be made as long as any order made by the Engineer to the Contractor in accordance with the specifications remains in noncompliance.

Article 7.11**Correction of Work After Final Payment**

Neither the final Certificate of Completion nor final payment nor progress payment shall relieve the Contractor from responsibility for paying all costs resulting from faulty materials or workmanship supplied under this Contract, and unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which appear within a period of one year from the date of final acceptance. The City shall give notice of observed defects with reasonable promptness. The Contractor shall initiate corrective action within five (5) days after written notification from the City. The Contractor's Surety will be notified of any existing defects not corrected within the above specified time.

Article 7.12**Payments**

Payments under the Contract shall be paid in cash by the City unless otherwise provided by the Special Provisions of these specifications.

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SECTION 10.08 **CERTIFICATE OF COMPLIANCE**

No final payment shall be made until the Contractor shall file with the Engineer, prior to acceptance of the work, a **notarized** Certificate of Compliance in the form substantially as follows: "I (we) hereby certify that all work has been performed and materials supplied in accordance with the plans, specifications and Contract Documents for the above work, and that:

Not less than the prevailing rates of wages, as required by the Alaska State Statute, have been paid to laborers, workmen, mechanics, or others employed on this work;

There have been no unauthorized substitutions of Subcontractors; nor have any subcontracts been entered into without the names of the Subcontractors having been submitted to the Engineer prior to the start of such subcontractor work;

No Subcontract was assigned or transferred or performed by any Subcontractor other than the original Subcontractor, without prior notice having been submitted to the Engineer together with the names of all Subcontractors;

All claims for material and labor and other service performed in connection with these specifications have been paid;

All monies due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund, the State Tax Commission, Hospital Associations and/or others have been paid."

Attached to this Certificate of Compliance is an approved Department of Labor Notice of Completion Form for this project.