

CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR CONSTRUCTION OF

CITY OF DILLINGHAM

DILLINGHAM STREETS REHABILITATION

Prepared for:

CITY OF DILLINGHAM
P.O. Box 889
Dillingham, Alaska 99576
(907) 842-4598



Prepared by:

PND ENGINEERS, INC.
1506 West 36th Avenue
Anchorage, Alaska 99503
(907) 561-1011



ISSUED FOR BID
JUNE 2019

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

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**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

INVITATION FOR BIDS

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

INVITATION FOR BIDS

Sealed Bids for the **CITY OF DILLINGHAM – DILLINGHAM STREETS REHABILITATION**, addressed to the City of Dillingham, will be received at the following locations:

City of Dillingham
P.O. Box 889
141 Main Street
Dillingham, AK 99576
Tel. 907-842-4598
Or

PND Engineers, Inc.
1506 West 36th Ave
Anchorage, AK 99517

Other pertinent bidding information is listed below:

Design Engineer – PND Engineers, Inc.

Pre-Bid Meeting – June 27, 2019 @ 2:00 pm (Alaska), at City Hall in Dillingham, AK; teleconference will be available

Bids Due – July 11, 2019 @ 1:00 pm (Alaska), the Bid Opening will be held at City Hall in Dillingham, teleconference will be available.

Final Completion Date – September 30, 2020

Sealed bids will be received until the local time (Alaska) and date specified above and then will be publicly opened and read. Any bids received after the time and date specified will not be considered.

Work Scope:

The work will include, but not be limited to, furnishing all labor, tools, equipment, and materials and performing all operations required to complete the **CITY OF DILLINGHAM – DILLINGHAM STREETS REHABILITATION**.

The work generally consists of reconstruction of various roadway and sidewalks located within the City of Dillingham. The work will require reconstruction of approximately 3000 linear feet of roadway. Reconstruction may include removal of existing asphalt, concrete sidewalk, and concrete curb and gutter, adjustment of existing utilities and installation of new roadway base with insulation, asphalt treated base, hot mix asphalt, and new concrete sidewalk and curb and gutter. Other items of work include minor storm drain improvements, installation of ADA compliant concrete curb ramps, roadway signs, topsoil and seeding, and line striping.

Project Location: Dillingham, Alaska

Owner: City of Dillingham

Bid Requirements:

Each Bid must be submitted on the prescribed form and accompanied by bid security as prescribed in the Instructions to Bidders, payable to the City of Dillingham, Alaska, in an amount not less than 5 (five) percent of the Total Bid amount. The successful Bidder will be required to furnish the necessary additional bond(s) for the faithful performance of the Contract, as prescribed in the Bidding/Contract Forms.

A site visit by all Bidders is strongly recommended.

The successful Bidder shall hold such Contractors and Business Licenses as required by State Statutes and City of Dillingham. The right is reserved to reject any or all Bids, to waive informalities or irregularities in the bidding, and to accept bids that are considered to be in the best interest of the City of Dillingham.

Interested bidders should email or fax their contact information on official letterhead to the City of Dillingham c/o PND Engineers, Fax (907) 563-4220, or Phone (907) 561-1011. Contact information should include company name, company address, contact name, phone, fax, and email address.

Technical questions shall be directed in writing to Mike Gemmell (PND Engineers, Inc.) at the address shown below:

PND Engineers, Inc.
1506 West 36th Avenue
Phone: (907) 561-1011 Fax: (907) 563-4220
Email: mgemmell@pndengineers.com

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

INSTRUCTIONS FOR BIDDERS

CITY OF DILLINGHAM DILLINGHAM STREETS REHABILITATION

INSTRUCTIONS FOR BIDDERS

BIDDERS are requested to study and follow these instructions as to the form and method for submitting BIDS.

1. Examination of Contract Requirements

BIDDERS are required to carefully examine all Contract Documents including the drawings and specifications to determine the requirements for preparing BIDS. Any explanations desired by the BIDDERS regarding the meaning or interpretation of the Contract Documents, must be submitted in writing and with sufficient time allowed for a reply before the submission of BIDS. Oral explanations or interpretations made prior to the submittal date shall be non-binding. All binding interpretations made will be issued to all BIDDERS in the form of an Addendum to the Contract Documents, and receipt by the BIDDERS shall be acknowledged on the BIDDERS Statement.

2. Conditions at the Site of Work

The CITY OF DILLINGHAM will hold a pre-bid meeting at the Dillingham City Hall, teleconference call in will be available. See Bid Invitation for time and date.

There will be a site visit directly after the pre-bid meeting to inspect conditions such as the location, accessibility and condition of the site.

After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of work or the nature of the work to be done.

3. City-Supplied Materials

Not Applicable.

4. Available Equipment

Not Applicable.

4. Preparation of Bids

BIDS shall be submitted on the forms furnished or copies thereof, and must be signed in ink. If erasures or other changes appear on the form, the change must be initialed in ink by the person signing the form. Only one copy of the BID form is required.

All words and figures must be typed or in ink. In case of any discrepancy between written and numerical figures, the written figures shall govern.

Conditional BIDS will not be considered.

All BIDDERS are required to complete and sign the Bid Schedule. The Contractor, by signing the BID, agrees to hold firm the bid price(s) for forty-five (45) days from the bid submission deadline.

5. Required Forms for Bid Submittal

The BIDDER must submit the following bid forms (or submittals) as part of the Bid Package for the BID to be considered.

- Bidder's Statement
- Bid Schedule
- Contractor Questionnaire
- Bid Bond
- Corporate Acknowledgment [for Bid]

6. Addenda Requirements

All Addenda should be acknowledged by the Contractor on the BIDDER'S Statement form. If no Addenda are received, the word "None" should be listed as the first addenda on the BIDDER'S Statement form.

7. Bid Bond

BIDS shall be accompanied by a certified check, money order, cashier's check, or Bid Bond issued by a surety company acceptable to the City and licensed to do business in the State of Alaska. Bid Bond shall be in an amount of 5% of the Total Base Bid Items, payable without condition to the CITY OF DILLINGHAM as a guarantee that the BIDDER, if awarded the Contract, shall promptly execute the agreement in accordance with the Bid Schedule.

The successful bidder shall be required to furnish a one-hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond guaranteeing faithful performance and the payment of all bills and obligations arising from the performance of the contract.

8. Submission of Bids

All BIDS, including any amendment or withdrawal, must be received at the address shown on the Invitation For Bid and prior to the BID submission deadline stated in the Invitation for Bids. BIDS must be submitted in a sealed envelope marked "Bids for CITY OF DILLINGHAM DILLINGHAM STREETS REHABILITATION". BIDS submitted electronically or by fax will NOT be accepted. Modifications to a bid received prior to the BID time may be submitted by fax. Fax cover shall be marked "Bid Modification for CITY OF DILLINGHAM DILLINGHAM STREETS REHABILITATION". Any technical difficulties of any kind which preclude the reception of BID adjustments by the posted BID deadline will invalidate that BID adjustment and the latest previously received BID adjustment will become said BIDDERS adjustment to their sealed BID.

BIDS received prior to the time of the BID submission deadline will be kept secure and unopened. The officer whose duty it is to open the BIDS will decide when the specified time has arrived, and no BID received thereafter will be considered.

9. General Requirements

Bidders must be licensed and bonded contractors. The successful BIDDER shall sign a contract with the City and be or become a licensed and bonded contractor in the State of Alaska.

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. Contractors and Subcontractors are also required to hold current Alaska and City of Dillingham 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 Subcontractor's compliance with the above shall be submitted to the City before starting subcontract work.

Construction activities must be coordinated with the normal operation of the City and Owners of properties adjacent to the project site. The Contractor shall develop a plan for review to coordinate and schedule work with these groups to minimize impacts to their operation. This will require weekly construction schedules and meetings or other means of communication so shipping operations can be coordinated.

The Contractor shall have full access to the site for staging, storage, and construction. The Contractor must consider whether there is adequate room for staging or storage during construction, and if not, should consider lease of additional areas. This must be considered in the Bid cost.

The City's intent is to work with the Contractor to provide prompt decisions and minimize the impact of delays. The Contractor is asked to work with the City and its City Manager or City Manager's designated Project Manager to resolve all issues and build a successful Project.

Construction activities and staging areas must be coordinated with the City and with adjoining tenants and/or landowners. Further requirements for coordination and scheduling are included in the Supplemental Conditions. This coordination and scheduling of construction activities must be considered in Bid cost.

10. Award of Contract

- A. The City reserves the right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids, and to reject the Bid of any Bidder if the City believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the City. The City also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate Contract terms with the successful Bidder. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.
- B. In evaluating Bids, the City will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- C. The City may consider the qualifications and experience of subcontractors, suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of subcontractors, suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. The City also may consider the operating costs, maintenance requirements, performance data, and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data are required to be submitted prior to the Notice of Award.

- D. The City may conduct such investigations as the City deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, proposed subcontractors, suppliers, and other persons and organizations to execute the work in accordance with the Contract Documents to the City's satisfaction within the prescribed time.
- E. If, at the time this Contract is to be awarded, the total of the lowest acceptable Bid exceeds the funds then estimated by the City as available, the City may reject all Bids or take such other action as best serves the City's interests.
- F. If the Contract is to be awarded, it will be awarded to the lowest responsive, responsible Bidder as stated in the Instructions To Bidders, whose evaluation by the City indicates to the City that the award will be in the best interests of the Project.
- G. In the event of failure of the lowest responsive, responsible Bidder to sign the Contract and provide an acceptable Performance Bond, Payment Bond, and insurance certificate(s), the Owner may award the Contract to the next lowest responsive, responsible Bidder. Such award, if made, will be made within 30 days after the opening of Proposals.
- H. An Additive or Deductive Bid Item is an amount proposed by Bidders and stated on the Bid Form for certain construction activities defined in the Bidding Requirements that may be added to or deducted from the Base Bid amount if the City decides to accept a corresponding change in either the amount of construction to be completed, or in the products, materials, equipment, systems or installation methods described in the Contract Documents.
- I. Award of the Additive or Deductive Bid Items will be made to the extent that construction funds are available, in such order as may suit the best interest of the City. The Deductive and Additive Bid items are not in any specific order and are not listed in order of preference. The City reserves the right to select the Base Bid plus any combination of Additive and/or Deductive Bid items. If the order of the bids is affected, the award will be made on the basis of the Base Bid plus any combination of Additive or Deductive Bid items that the City selects at their option.
- J. Any unsuccessful bidder may appear before the Dillingham City Council on the date the Council is scheduled to award the Contract and present testimony to council regarding his/her bid and the City Manager's recommendation of award.

11. Additive and Deductive Alternates

When applicable, the City reserves the right to add or deduct any Additive or Deductive Bid Items (alternates) from the Base Bid when such action is in the best interest of the City. An order for adding or deducting the alternates need not be specified in the Bid Documents.

12. Payment and Performance Bonds

The successful BIDDER shall furnish good and sufficient bonds for one hundred percent (100%) of the Contract Price for Performance Bond and one hundred percent (100%) of the Contract Price for Material and Labor Payment Bond in accordance with requirements of Article 5 of the General Conditions. These Bonds shall be submitted on the forms furnished in these Bid Documents and shall be submitted within 10 calendar days from the date of Notice of Award.

13. Required Insurance

The successful BIDDER must obtain Insurance in accordance with Article 5 of the General Conditions and submit Certificates of Insurance in compliance with paragraph 5.4 of the General Conditions. Certificates of Insurance must be submitted within 10 calendar days from the date of Notice of Award.

Insurance for General Liability shall name the “CITY OF DILLINGHAM” and “PND Engineers, Inc.” as additional insureds.

14. Liquidated Damages

The Contract with the City shall contain provisions for liquidated damages due to delay. Specific language for Delay Damages is contained in the City-Contractor Agreement section of the Contract.

15. Withdrawal of Bids

BIDS may be withdrawn by written letter or fax transmission received prior to the time fixed for submittal of BIDS. Withdrawn Bids by fax must also have the written confirmation mailed and postmarked prior to the time set for receipt of BIDS. No Bid may be withdrawn after the bid submission deadline shown on the Invitation for Bids.

16. Wage Rates and Employment Preferences

Each BIDDER, and the BIDDER awarded a contract, shall comply with federal, state and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees and similar subjects. Further requirements are included in the Supplemental Conditions and Article 7 of the General Conditions.

17. Project Management

Contractor shall coordinate construction activities as described in the Supplemental Conditions.

18. Taxes

All taxes that are lawfully assessed against the Owner or Contractor in connection with the work shall be paid by the Contractor. The Bid prices shall include all such taxes. The Contractor is responsible to make themselves aware of all applicable local taxes and their impact on Bid prices.

20. Permits

It is the responsibility of the Contractor to coordinate and obtain all local permits required by the City for the Project.

21. Geotechnical Information

Geotechnical information for the Project is available at the Contractor’s request.

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

REQUIRED FORMS FOR BID SUBMITTAL

Bidder's Statement

Bid Schedule

Contractor Questionnaire

Bid Bond

Corporate Acknowledgment (for Bid)

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

BIDDER'S STATEMENT

In submitting this Bid, the undersigned agrees:

1. To accept and comply with the provisions of Instructions to Bidders and Invitation for Bids.
2. To hold his or her Bid open for forty five (45) days from the Bid submission deadline.
3. To being skilled and expert in the type of construction required for the project.
4. To have carefully examined all contract documents, to have visited the site and to have no questions as to the quantities or scope of work.
5. That the CITY OF DILLINGHAM reserves the right to reject any or all bids.
6. That this bid has been arrived at independently, without consultation, communication or agreement as to any matter relating to the BID with any other Bidder or competitor; and in the case of a joint BID each party thereto agrees as to his own organization.

And if awarded the Contract on the basis of this BID, the undersigned agrees:

1. To enter into and execute a Contract with the CITY OF DILLINGHAM.
2. To comply with the terms and conditions set forth in the Bid Documents, including all Bond and Insurance requirements.
3. To accomplish the work in accord with the Contract Documents.
4. To commence work upon receipt of Notice to Proceed and to fully complete the work in the time stipulated.

The undersigned acknowledges receipt of the following addenda to the bid documents (give number and date of each, or if no addenda received write NONE):

Addendum _____	Date _____	Initial _____
Addendum _____	Date _____	Initial _____
Addendum _____	Date _____	Initial _____
Addendum _____	Date _____	Initial _____
Addendum _____	Date _____	Initial _____

The undersigned represents (check appropriate boxes) that he/she operates as an [] Individual; [] Partnership; [] Joint Venture; [] Corporation, Incorporated in the State of _____.

Alaska Contractor's Certificate of Registration/License No. _____ Date Issued: _____

Alaska Business License No. _____ Date Issued: _____

Business for which issued: _____

(Attach a copy of current Alaska Contractor's License and current Alaska Business License)

NAME OF FIRM OR INDIVIDUAL (Type or Print):

_____.

NAME OF PARTNERS (Type or Print):

(Authorized signature in ink)

Name and Title: (Type or Print in ink)

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION
BID SCHEDULE**

Basic Bid

<i>Item Number</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Unit Price</i>	<i>Amount</i>
201(3B)	Clearing and Grubbing	Lump Sum	All Required		
202(2)	Removal of Pavement	Square Yard	4,630		
202(3)	Removal of Sidewalk	Square Yard	260		
202(9)	Removal of Curb and Gutter	Linear Foot	750		
203(3)	Unclassified Excavation	Cubic Yard	13,500		
203(6)	Borrow, Type A	Ton	18,110		
301(1)	Aggregate Base Course, Grading D-1	Ton	1,520		
306(1)	ATB	Ton	1,450		
306(2)	Asphalt Binder, PG 52-34	Ton	77		
306(15)	Asphalt Price Adjustment	Contingent Sum	All Required	\$0.00	\$0.00
401(1)	HMA, Type II; Class A	Ton	990		
401(4)	Asphalt Binder, PG 52-34	Ton	52		

<i>Item Number</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Unit Price</i>	<i>Amount</i>
402(1)	STE-1 Asphalt for Tack Coat	Ton	3		
604(4)	Adjust Existing Manhole	Each	9		
604(13B)	Remove and Replace Storm Drain Manhole Frame, Inlet, and Grate	Each	3		
607(4)	Reconstructed Fence	Lump Sum	All Required		
608(1A)	Concrete Sidewalk, 4 inches thick	Square Yard	610		
608(1B)	Concrete Sidewalk, 6 inches thick	Square Yard	200		
608(6)	Curb Ramp	Each	4		
609(2)	Curb and Gutter, Type 1	Linear Foot	720		
610(2)	Ditch Lining	Ton	30		
615(1)	Standard Sign	Square Foot	104		
615(6)	Salvage Sign	Each	4		
618(2)	Seeding	Pound	50		
620(1)	Topsoil	Square Yard	130		

<i>Item Number</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Unit Price</i>	<i>Amount</i>
627(10)	Adjustment of Valve Box	Each	9		
630(2)	Geotextile, Stabilization, Class I	Square Yard	9,600		
635(1)	Insulation Board	MBM	175		
639(3)	Approach	Each	13		
640(1)	Mobilization and Demobilization	Lump Sum	All Required		
640(4)	Worker Meals and Lodging, or Per Diem	Lump Sum	All Required		
641(1)	Erosion, Sediment and Pollution Control Administration	Lump Sum	All Required		
641(2)	Temporary Erosion, Sediment And Pollution Control	Contingent Sum	All Required	\$40,000.00	\$40,000.00
641(6)	Withholding	Contingent Sum	All Required	\$0.00	\$0.00
641(7)	SWPPP Manager	Lump Sum	All Required		
642(1)	Construction Surveying	Lump Sum	All Required		
642(3)	Three Person Survey Party	Hour	40		
643(2)	Traffic Maintenance	Lump Sum	All Required		
643(3)	Permanent Construction Signs	Lump Sum	All Required		
<i>Item Number</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Unit Price</i>	<i>Amount</i>

643(15A)	Flagging	Contingent Sum	All Required	\$55,000.00	\$55,000.00
643(23)	Traffic Price Adjustment	Contingent Sum	All Required	\$0.00	\$0.00
643(25)	Traffic Control	Contingent Sum	All Required	\$70,000.00	\$70,000.00
644(1)	Field Office	Lump Sum	All Required		
644(8)	Vehicle (LT/SUV)	Each	1		
644(10)	Engineering Communications	Contingent Sum	All Required	\$5,000.00	\$5,000.00
644(15)	Nuclear Testing Equipment Storage Shed	Each	1		
646(1)	CPM Scheduling	Lump Sum	All Required		
670(10)	MMA Pavement Markings	Lump Sum	All Required		
685(1)	Site Pre-Cleaning	Lump Sum	All Required		

TOTAL BASE BID (NUMERICAL) _____

TOTAL BASE BID (WRITTEN TEXT) _____

BID AUTHORIZATION

The undersigned represents (check appropriate boxes) that he/she operates as an Individual,
 Joint Venture, Partnership, or Corporation, incorporated in the State of _____.

BIDDER: _____

Company (Print)

Authorized Representative (Print)

Authorized Representative (Signature)

Title (Print)

Date

Telephone

CORPORATE SEAL (If Corporation)

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

CONTRACTOR QUESTIONNAIRE

This questionnaire shall be completely filled out for the project upon which a bid is submitted. Use additional sheets as necessary.

A. FINANCIAL

1. Have you ever failed to complete a contract on account of insufficient resources? ____
2. Have you made sufficient arrangements to finance the work? _____
If so, with whom and for what amount? _____
If so, with what company? _____

B. EQUIPMENT

1. Set forth below the equipment which you have available for the work which you propose to do. This equipment should be listed in detail (General statements will not be accepted).

NO.	ITEMS	TYPE	SIZE/CAPACITY	PRESENT VALUE

2. Do you thoroughly understand that in case contract is awarded to you, you may be required to use any or all of the equipment listed on the work covered by the contract?

3. Do you propose to purchase any equipment for use on this project should the contract be awarded to you? If so, state type, quantity, and approximate cost. _____

4. Do you propose to rent any equipment for this work? _____
If so, state type, quantity, and reason for renting. _____

5. Have you made contracts or received firm offers for all necessary materials with the prices used in preparing your proposal?

6. Do you intend to plan to subcontract any of the work? _____
If so, what types or portions of the work? _____
Approximate value \$ _____ Percent of total bid _____

C. EXPERIENCE

1. How many years has your organization been in business as a general contractor under your present business name? _____
2. How many years experience in construction work has your organization had:
 - a) as a General Contractor _____?
 - b) as a Sub Contractor _____?
3. List previous contracts you have completed of a similar nature to the proposed contract:
 - a) _____
 - b) _____
 - c) _____
 - d) _____
 - e) _____
4. List projects which you currently have under contract or expect to have under contract during the life of this contract:
 - a) _____
 - b) _____
 - c) _____
5. List your staff you plan to use on this project and the position they will fill for this project (include the managerial and clerical personnel that will provide support services).

STAFF MEMBER	POSITION
_____	_____
_____	_____
_____	_____

Signature: _____ Title: _____

D. ADDITIONAL SUBMITTALS

Submit the additional following documents applicable to your business organization:

1. Joint Venture
 - a) Joint Venture Agreement
 - b) A statement signed by authorized person of each party to the joint venture
 - c) Each party shall submit the documents required for corporations or partnerships as applicable
2. Partnership
 - a) Partnership Agreement
 - b) A statement signed by all partners granting authority to the partner signing the bid.
3. Corporation
 - a) Articles of Incorporation (**most recent**)
 - b) By-Laws (**most recent**)
 - c) Resolution on the Board of Directors granting authority to the officer signing on behalf of the corporation.

BID BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned, _____
_____ as Principal, and
_____ as Surety, are hereby held and
firmly bound unto _____ as City in the penal sum of
_____ for the payment of which, well and truly to be made,
we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and
assignees.

Signed, this _____ day of _____, 20____.

The condition of the above obligation is such that whereas the Principal has submitted to
_____ a certain Bid, attached
hereto and hereby made a part hereof to enter into a contract in writing, for the

NOW, THEREFORE,

- (a) If said Bid shall be rejected, or in the alternate,
- (b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a bond for his/her faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid,

then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the City may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, The Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

_____(L.S.)
Principal

Surety
By: _____

IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

CORPORATE ACKNOWLEDGMENT
(for Bid)

(To be filled in when contract is executed in behalf of a Corporation)

UNITED STATES OF AMERICA)
)
STATE OF ALASKA)

The foregoing instrument was acknowledged before me this _____ day of

_____, 20__ by _____

(Name of Officer)

_____ of _____

(Title of Officer)

(Name of Corporation)

a _____ Corporation, on behalf of said Corporation.

(State of Incorporation)

Notary Public

My Commission Expires:

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

**CITY-CONTRACTOR
AGREEMENT**

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

CITY-CONTRACTOR AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____ in the year **2019**, by and between the **CITY OF DILLINGHAM**, hereinafter called "CITY" and _____ hereinafter called "CONTRACTOR." CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article A. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Work includes all labor, equipment, materials and incidentals required to complete the project as specified in the Plans & Specifications. The work shall consist of the Base Bid Items and selected Additive Alternatives as identified in the Bid Schedule.

The Project for which the Work under the Contract Documents is generally described as follows:

CITY OF DILLINGHAM – DILLINGHAM STREETS REHABILITATION

Article B. ENGINEER

The Project has been designed by PND Engineers, Inc. (Anchorage, AK) who is hereinafter called "ENGINEER" in the Contract Documents.

Article C. CONTRACT TIME

C.1 For the selected Bid Schedule Items, the Substantial Completion date shall be **August 31, 2020** and the Final Completion Date shall be **September 30, 2020**.

C.2 *Delay Damages.* Delay damages shall be in accordance with paragraph 11.8 of the General Conditions. CITY and CONTRACTOR recognize that time is of essence in this Agreement and that CITY will suffer financial loss if the Work is not substantially complete within the time specified in paragraph C.1 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize that losses resulting from delayed completion include extended disruption and loss of use of private and public property impacted by the Project, reduced recreational and commercial opportunity for the residents of Dillingham, and general inconvenience to the public. These types of losses are difficult to quantify. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding, the actual loss suffered by CITY if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay CITY one thousand dollars (\$1000) per day for each day that expires after the time specified in paragraph C.1 for substantial completion until the Work is substantially complete, and five hundred dollars (\$500) per day for each day that expires after the time specified in paragraph C.1 for final completion until the Work is finally complete. Should substantial completion not be accomplished before the final completion date, then the combined liquidated damages shall be one thousand dollars (\$1000) per day.

Article D. CONTRACT PRICE

D.1 CITY shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds as follows:

The amount according to the Bid Schedule for the Base Bid Items as defined in Article A “Work” on the previous pages.

The Contract Sum for the Base Bid and any awarded Additive Alternate Items is: \$ _____
Amount in words: _____.

Article E. PAYMENT PROCEDURES

Payments to the Contractor shall be in accordance with the provisions of Article 13 of the General Conditions and as amended below.

The City Manager shall review Application for Payments within 15 days of the receipt of the Application. Approved Applications for Payment shall have payments issued within 30 days of the approval date.

E.1 *Progress Payments.* CITY shall make progress payments to the Contractor in accordance with the provisions of Article 13 of the General Conditions.

E.1.1 Prior to Substantial Completion progress payments will be in an amount equal to: 90% of the Work completed as defined by Article 13.1 of the General Conditions, and 90% of Stored Materials and Equipment as described in Article 13.5 of the general conditions less in each case the aggregate of payments previously made.

E.1.2 Upon Substantial Completion, CITY shall pay an amount to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts for items not fully completed as determined by the City Manager, or less amounts where allowed by the provisions of Withholding of Payments and Retainage per Article 13 of the General Conditions.

E.2 *Final Payment.* City shall pay the remainder of the contract price to the contractor in accordance with the provisions of Article 13.14 of the General Conditions.

E.3 *Deductions.* The City may deduct from the amount of any payment made to Contractor any sums owed to City by Contractor including, but not limited to, past due sales tax, port and harbor fees, property tax, or rent. Before making any such deduction the City shall have provided Contractor written notice of the amount claimed by City to be due and owing from Contractor.

Article F. INTEREST

F.1 All retainage shall bear interest at the rate required by AS 36.90.250, if applicable.

Article G. CONTRACTOR'S REPRESENTATIONS

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

G.1 CONTRACTOR has familiarized themselves with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws,

ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

- G.2 CONTRACTOR has studied carefully all reports of investigations and physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified on the Plans. This includes the geotechnical information included in the Plans.
- G.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph G.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- G.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- G.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article H. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between CITY and CONTRACTOR are attached to this Agreement, made a part hereof and consists of the following:

- H.1 City-Contractor Agreement
- H.2 Contract Exhibits:
 - H.2.1 Invitation for Bids
 - H.2.2 Instructions to BIDDERS
 - H.2.3 Bid Statement (completed form from Bid)
 - H.2.4 Addenda (issued during Bid)
 - H.2.5 Bid Schedule (completed form from Bid)
 - H.2.6 Contractor Questionnaire (completed form from Bid)
 - H.2.7 Corporate Acknowledgment (for Bid) (completed form from Bid)
 - H.2.8 Notice of Award (Letter Issued by City)
 - H.2.9 Payment Bond (on City furnished form)
 - H.2.10 Performance Bond (on City furnished form)
 - H.2.11 Insurance Certificate(s) (on Contractor supplied form(s))
 - H.2.12 Corporate Acknowledgment (for Contract) (on City furnished form)
 - H.2.13 Notice to Proceed (Letter Issued by City)
 - H.2.14 Change Order Form (City furnished form, for Change Orders if required)
- H.3 General Conditions
- H.4 Supplementary Conditions
- H.5 Appendix:
 - H.5.1 State and Federal Permits
 - H.5.2 Drawing List
 - H.5.3 Project Specifications
- H.6 Drawing Set (Drawings identified in Drawing List)
- H.7 Any Change as defined in Article 9, "Changes" of the General Conditions, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this Article H. The Contract Documents may only be altered, amended or repealed by a Change as defined in Article 9, "Changes" of the General Conditions.

Article I. MISCELLANEOUS

- I.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- I.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- I.3 CITY and CONTRACTOR each bind themselves, their partners, successors, assignees and legal representatives to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents.
- I.4 AWARD OF THE CONTRACT: CONTRACT shall not be awarded to any CONTRACTOR nor shall CONTRACTOR employ SUBCONTRACTOR, SUPPLIER or other person or organization, whether initially or as a substitute, who is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."
- I.5 The CONTRACTOR shall submit the Performance Bond, Labor and Material Payment Bonds, and Certification of Insurance and City of Dillingham business licenses and all Subcontractor City of Dillingham business licenses as required by the Contract Documents, prior to commencement of the Work. The Performance and Material Payment Bonds shall be in the amount of 100% of the contract bid price. The CONTRACTOR shall provide a copy of the Notice of Work filed with the State of Alaska Department of Labor together with proof of payment of the filing fees (AS 36.05.045).
- I.6 DBE ANTI-DISCRIMINATION CONTRACT CLAUSE: The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

AGREEMENT AUTHORIZATION

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to CITY, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by CITY and CONTRACTOR or by duly authorized Agents on their behalf.

This Agreement will be effective on _____, 2019.

CITY OF DILLINGHAM

[_____]

By: _____

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices:

Address for giving notices:

P.O. Box 889 _____

Dillingham, AK 99576 _____

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

CONTRACT FORMS

Contract Bond (Payment)

Contract Bond (Performance)

Corporate Acknowledgment (for Contract)

CONTRACT BOND
(Payment)

Principal: _____

Surety: _____

Penal Sum of Bond (Express in Words and Figures): _____

KNOW BY ALL MEN BY THESE PRESENTS that we, Principal and Surety as above named, are firmly bound and held unto CITY OF DILLINGHAM in the penal sum of _____ Dollars (\$ _____), good and lawful money of the United States of America, for payment whereof, will and truly be made, we bind ourselves, our heirs, executors, administrators, and assignees, jointly and severally, firmly by these presents.

WHEREAS, the said principals have entered into written contract with CITY OF DILLINGHAM on the ____ day of _____, 20____, for the construction of _____

_____ said work to be done according to the terms of said contract.

Now, THEREFORE, the conditions of the foregoing obligations are such that if the said principals shall comply with all requirements of law and pay, as they become due, all just claims for labor performed and materials and supplies furnished upon or for the work under said contract, whether said labor be performed and said materials and supplies be furnished under the original contract, any subcontract, or any and all duly authorized modifications thereto, and shall indemnify and save harmless CITY OF DILLINGHAM and employees thereof against any damage or loss which they or any of them may suffer or for which they or any of them become liable; by the default of said principals, or by any neglect or carelessness on the part of said principals, their agents, servants, or employees, then these presents shall become void, otherwise they shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals at _____ Alaska, this day of _____, 20____.

PRINCIPALS

RESIDENT AGENT
SURETIES

(Corporation Seal)

CONTRACT BOND
(Performance)

Principal: _____

Surety: _____

Penal Sum of Bond (Express in Words and Figures): _____

KNOW BY ALL MEN BY THESE PRESENTS that we, Principal and Surety as above named, are firmly bound and held unto CITY OF DILLINGHAM in the penal sum of _____ Dollars (\$ _____), good and lawful money of the United States of America, for payment whereof, will and truly be made, we bind ourselves, our heirs, executors, administrators, and assignees, jointly and severally, firmly by these presents.

WHEREAS, the said principals have entered into written contract with CITY OF DILLINGHAM on the _____ day of _____, 20____, for the construction of _____

said work to be done according to the terms of said contract.

Now, THEREFORE, the conditions of the foregoing obligations are such that if the said principals shall comply with all requirements of law and pay, as they become due, all just claims for labor performed and materials and supplies furnished upon or for the work under said contract, whether said labor be performed and said materials and supplies be furnished under the original contract, any subcontract, or any and all duly authorized modifications thereto, and shall indemnify and save harmless CITY OF DILLINGHAM and employees thereof against any damage or loss which they or any of them may suffer or for which they or any of them become liable; by the default of said principals, or by any neglect or carelessness on the part of said principals, their agents, servants, or employees, then these presents shall become void, otherwise they shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals at _____ Alaska, this day of _____, 20____.

PRINCIPALS

RESIDENT AGENT
SURETIES

(Corporation Seal)

CORPORATE ACKNOWLEDGMENT

(for Contract)

(To be filled in when contract is executed in behalf of a Corporation)

UNITED STATES OF AMERICA)

)

STATE OF ALASKA)

The foregoing instrument was acknowledged before me this _____ day of

_____, 20__ by _____

(Name of Officer)

_____ of _____

(Title of Officer)

(Name of Corporation)

a _____ Corporation, on behalf of said Corporation.

(State of Incorporation)

Notary Public

My Commission Expires:

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

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GENERAL CONDITIONS

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ARTICLE 1 - DEFINITIONS

Wherever used in the Contract Documents the following terms, or pronouns in place of them, are used, the intent and meaning, unless a different intent or meaning is clearly indicated, shall be interpreted as set forth below.

The titles and headings of the Sections, Subsections and Articles herein are intended for convenience of reference and shall not be considered as having bearing on their interpretation.

Whenever used in the Specifications or other Contract Documents the following terms have the meaning indicated which are applicable to both the singular and plural thereof. Working titles which have a masculine gender, are intended to refer to persons of either sex.

Terms not defined below shall have their ordinary accepted meanings within the context which they are used. "Webster's Third New International Dictionary of the English Language, Unabridged, Copyright 1961", or subsequent revision thereof; shall provide ordinarily accepted meanings. Words which have a well-known technical or trade meaning when used to describe work, materials or equipment shall be interpreted in accordance with such meaning. Words defined in Article 1 are capitalized throughout these General Conditions.

Addenda - All clarifications, corrections, or changes issued graphically or in writing by the CITY after the advertisement but prior to the opening of proposals.

Advertisement - The public announcement, as required by law, inviting Bids for work to be performed or materials to be furnished.

Application for Payment - The form provided by the CITY which is used by the CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

Approved or Approval - Means written approval by City Manager or his authorized representative as defined in Article 2.1.

A.S. - Initials which stand for Alaska Statute.

Award - The acceptance, by the City, of the successful Bid.

Bid Bond - A type of proposal Guarantee.

Bidder - Any individual, firm, corporation or any acceptable combination thereof, or joint venture submitting a bid for the advertised Work.

Calendar Day - Every day shown on the calendar, beginning and ending at midnight.

Change Order - A written order by the CITY directing changes to the contract, within its general scope.

City - CITY OF DILLINGHAM
Office of the City Manager
P.O. Box 889
Dillingham, Alaska 99576
Tel. (907) 842-5211
Fax (907) 842-5691

References to "Owner" or "Contracting Agency" mean the City.

Conditions of the Contract - Those portions of the Contract Documents which define the rights and responsibilities of the contracting parties and of others involved in the Work. The Conditions of the Contract include General Conditions, Supplementary Conditions and other Conditions.

Contract - The written agreement between the CITY and the CONTRACTOR setting forth the obligations of the parties and covering the Work to be performed, all as required by the Contract Documents.

Contract Documents - The Contract Form, Addenda, the Bidding Requirements and CONTRACTOR's Bid (including all appropriate bid tender forms), the Bonds, the Conditions of the Contract and all other Contract Requirements, the Specifications, and the Drawings furnished by the CITY to the CONTRACTOR, together with all change orders and documents approved by the City Manager for inclusion, modifications and supplements issued on or after the Effective Date of the Contract.

City Manager - The person authorized to enter into and administer the contract on behalf of the CITY. The City Manager has authority to make findings, determinations and decisions with respect to the contract.

CONTRACTOR - The individual, firm, corporation or any acceptable combination thereof, contracting with the CITY for performance of the Work.

Contract Price - The total moneys payable by the CITY to the CONTRACTOR under the terms of the Contract Documents.

Contract Time - The number of Calendar Days or the date specified in the Construction Contract and authorized time extensions which identify how much time the CONTRACTOR is allowed to achieve Final Completion.

Consultant - A person, firm, agency or corporation retained by the CITY to prepare Contract Documents, perform construction administration services, or other Project related services.

Defective - An adjective which refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the CITY's approval of final payment.

Directive - A written communication to the CONTRACTOR from the City Manager interpreting or enforcing a contract requirement or ordering commencement of an item of work.

Drawings - The drawings which show the character and scope of the Work to be performed and which have been furnished by the CITY or the CITY's Consultant and are by reference made a part of the Contract Documents.

Effective Date of the Contract - The date on which the Contract is fully executed by both CONTRACTOR and the CITY.

Final Completion - The Work (or specified part thereof) has progressed to the point that all Work is complete as determined by the City Manager.

General Requirements - Sections of Division 1 of the Specifications which contain administrative and procedural requirements as well as requirements for temporary facilities which apply to Specification Divisions 2 through 16.

Holidays - The CITY OF DILLINGHAM recognizes the following holidays:

1. New Years Day - January 1
2. Martin Luther King Day - Third Monday in January
3. President's Day - Third Monday in February
4. Beaver Roundup - First Friday in March
5. Seward's Day - Fourth Monday in March
6. Memorial Day - Last Monday in May
7. Independence Day - July 4
8. Labor Day - First Monday in September
9. Columbus Day - Second Monday in October
10. Alaska Day - October 18
11. Veteran's Day - November 11
12. Thanksgiving Day - Fourth Thursday in November
13. Christmas Day - December 25

If any holiday listed above falls on a Saturday, Saturday and the preceding Friday are both legal holidays. If the holiday should fall on a Sunday, Sunday and the following Monday are both legal holidays.

Install - Means to build into the Work, ready to be used in complete and operable condition and in compliance with Contract Documents.

Invitation for Bids - A portion of the Bidding Documents soliciting bids for the Work to be performed.

Notice of Intent to Award - The written notice by the CITY to all Bidders identifying the apparent successful Bidder and establishing the CITY's intent to execute the Contract when all conditions required for execution of the Contract are met.

Notice to Proceed - A written notice to the CONTRACTOR to begin the Work and establishing the date on which the Contract Time begins.

Payment Bond - The security furnished by the CONTRACTOR and his surety to guarantee payment of the debts covered by the bond.

Performance Bond - The security furnished by the CONTRACTOR and his surety to guarantee performance and completion of the work in accordance with the contract.

Project - The total construction, of which the Work performed under the Contract Documents is the whole or a

part, where such total construction may be performed by more than one prime contractor.

Project Manager - The authorized representative of the City Manager who is responsible for administration of the Contract.

Proposal - The offer of a bidder, on the prescribed form to perform the work at the prices quoted.

Proposal Guaranty - The security furnished with a proposal to guarantee that the bidder will enter into a contract if his proposal is accepted by the CITY.

Regulatory Requirement - Laws, rules, regulations, ordinances, codes and/or orders.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the CONTRACTOR to illustrate material, equipment, fabrication, or erection for some portion of the Work.

Specification - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative and procedural details applicable thereto.

Subcontractor - An individual, firm, or corporation to whom the CONTRACTOR sublets part of the contract.

Substantial Completion - Although not fully completed, the Work (or a specified part thereof) has progressed to the point where, in the opinion of the CITY as evidenced by the CITY's written notice, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "Substantially Complete" and "Substantially Completed" as applied to any Work refer to Substantial Completion thereof.

Supplemental Agreement - A written agreement between the CONTRACTOR and the CITY covering work that is not within the general scope of the contract.

Surety - The corporation, partnership, or individual, other than the CONTRACTOR, executing a bond furnished by the CONTRACTOR.

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

Using Agency - The entity who will occupy or use the completed Work.

Work - Work is the act of, and the result of, performing services, furnishing labor, furnishing and incorporating materials and equipment into the Project and performing other duties and obligations, all as required by the Contract Documents. Such Work, however incremental, will culminate in the entire completed Project, or the various separately identifiable parts thereof.

ARTICLE 2 - AUTHORITIES AND LIMITATIONS

2.1 Authorities and Limitations

2.1.1 The City Manager alone shall have the power to bind the CITY and to exercise the rights, responsibilities, authorities and functions vested in the City Manager by the Contract Documents, except that the City Manager shall have the right to designate in writing authorized representatives to act for them. Wherever any provision of the Contract Documents specifies an individual or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the CITY that individual or organization shall be deemed to be the City Manager's authorized representative under this Contract but only to the extent so specified. The City Manager may, at any time during the performance of this Contract, vest in any such authorized representatives additional power and authority to act for the City Manager or designate additional representatives, specifying the extent of their authority to act for the City Manager; a copy of each document vesting additional authority in or removing that authority from an authorized representative or designating an additional authorized representative shall be furnished to the CONTRACTOR. The City Council reserves the right to appoint a new City Manager without affecting any of the CONTRACTOR's obligations to the CITY under this Contract.

2.1.2 The CONTRACTOR shall perform the Work in accordance with any written order (including but not limited to instruction, direction, interpretation or determination) issued by an authorized representative in accordance with the authorized representative's authority to act for the City Manager. The CONTRACTOR assumes all the risk and consequences of performing the Work in accordance with any order (including but not

limited to instruction, direction, interpretation or determination) of anyone not authorized to issue such order, and of any order not in writing.

2.1.3 Should the City Manager or authorized representative designate Consultant(s) to act for the CITY as provided for in Paragraph 2.1.1, the performance or nonperformance of the Consultant under such authority to act, shall not give rise to any contractual obligation or duty of the Consultant to the CONTRACTOR, any Subcontractor, any Supplier, or any other organization performing any of the Work or any Surety representing them.

2.1.4 The term "City Manager" when used in the text of these General Conditions or other Contract Documents following this section shall also mean any duly authorized representative of the City Manager when authorized in accordance with Paragraph 2.1.1.

2.2 Evaluations by Project Manager:

2.2.1 The Project Manager will decide all questions which may arise as to;

- a. Quality and acceptability of materials furnished;
- b. Quality and acceptability of Work performed;
- c. Compliance with the Schedule of Progress;
- d. Interpretation of Contract Documents;
- e. Acceptable fulfillment of the Contract on the part of the CONTRACTOR.

2.2.2 In order to avoid cumbersome terms and confusing repetition of expressions in the Contract Documents whenever the terms "as ordered", "as directed", "as required", "as approved", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used it shall be understood as if the expression were followed by the words "the City Manager". When such terms are used to describe a requirement, direction, review or judgment of the City Manager as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise).

2.2.3 The use of any such term or adjective shall not be effective to assign to the CITY any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provision of paragraphs 2.3 or 2.4.

2.3 Means & Methods:

The means, methods, techniques, sequences or procedures of construction, or safety precautions and the program incident thereto, and the failure to perform or furnish the Work in accordance with the Contract Documents are the sole responsibility of the CONTRACTOR.

2.4 Visits to Site:

The Project Manager will make visits to the site and approved remote storage sites at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Such observations or the lack of such observations shall in no way relieve the CONTRACTOR from his duty to perform the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Incomplete Contract Documents:

The submission of a Bid by the Bidder is considered a representation that the Bidder examined the Contract Documents to make certain that all sheets and pages were provided and that the Bidder is satisfied as to the conditions to be encountered in performing the Work. The CITY expressly denies any responsibility or liability for a Bid submitted on the basis of an incomplete set of Contract Documents.

3.2 Copies of Contract Documents:

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

3.3 Scope of Work:

The Contract Documents comprise the entire Contract between the CITY and the CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the Regulatory Requirements of the place of the Project.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of the Contract to create in the public or any member thereof a third party benefit, or to authorize anyone not a party to this Contract to maintain a suit pursuant to the terms or provisions of the Contract.

3.4 Intent of Contract Documents:

3.4.1 It is the intent of the Contract Documents to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied, without any adjustment in Contract Price or Contract Time, whether or not specifically called for.

3.4.2 Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Regulatory Requirements of any governmental authority, whether such reference be specific or by implication, shall mean the edition stated in the Contract Documents or if not stated the latest standard specification, manual, code or Regulatory Requirements in effect at the time of Advertisement for the Project (or, in the Effective Date of the Contract if there was no Advertisement). However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the CITY and the CONTRACTOR, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the CITY or any of the CITY's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 2.3 or 2.4.

3.5 Discrepancy in Contract Documents:

3.5.1 Before undertaking the Work, the CONTRACTOR shall carefully study and compare the

Contract Documents and check and verify pertinent figures, and dimensions shown thereon and all applicable field measurements. Work in the area by the CONTRACTOR shall imply verification of figures, dimensions and field measurements. If, during the above study or during the performance of the Work, the CONTRACTOR finds a conflict, error, discrepancy or omission in the Contract Documents, or a discrepancy between the Contract Documents and any standard specification, manual, code, or Regulatory Requirement which affects the Work, The CONTRACTOR shall promptly report such discrepancy in writing to the City Manager. The CONTRACTOR shall obtain a written interpretation or clarification from the City Manager before proceeding with any Work affected thereby. Any adjustment made by the CONTRACTOR without this determination shall be at his own risk and expense. However, the CONTRACTOR shall not be liable to the CITY for failure to report any conflict, error or discrepancy in the Contract Documents unless the CONTRACTOR had actual knowledge thereof or should reasonably have knowledge thereof.

3.5.2 Discrepancy - Order of Precedence:

When conflicts, errors, or discrepancies within the Contract Documents exist, the order of precedence from most governing to least governing will be as follows:

- Supplementary Conditions
- General Conditions
- General Requirements
- Technical Specifications
- Drawings (recorded dimensions will govern over scaled dimensions, large details over small scale, schedules over Plans, architectural drawings over structural drawings over mechanical and electrical drawings)

3.6 Clarifications and Interpretations:

The Project Manager will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as the Project Manager may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

3.7 Reuse of Documents:

Neither the CONTRACTOR nor any Subcontractor, or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the CITY shall have or acquire any title to or ownership rights in any of the Contract Documents (or copies thereof) prepared by or for the CITY and they shall not reuse any of the Contract Documents on extensions of the Project or any other project without written consent of the City Manager.

Contract Documents prepared by the CONTRACTOR in connection with the Work shall become the property of the CITY.

ARTICLE 4 - LANDS AND PHYSICAL CONDITIONS

4.1 Availability of Lands:

The CITY shall furnish as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for use of the CONTRACTOR in connection with the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the CITY, unless otherwise provided in the Contract Documents. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Visit to Site:

The submission of a Bid by the CONTRACTOR is considered a representation that the CONTRACTOR has visited and carefully examined the site and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract Documents.

4.3 Explorations and Reports:

Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the CITY in preparation of the Contract Documents. The CONTRACTOR may for his purposes rely upon the accuracy of the factual data contained in such reports, but not upon interpretations or opinions drawn from such factual data contained therein or for the completeness or sufficiency thereof. Except as

indicated in the immediately preceding sentence and in paragraphs 4.4 and 9.9, CONTRACTOR shall have full responsibility with respect to surface and subsurface conditions at the site.

4.4 Utilities:

4.4.1 The horizontal and vertical locations of known underground utilities as shown or indicated by the Contract Documents are approximate and are based on information and data furnished to the CITY by the owners of such underground utilities.

4.4.2 The CONTRACTOR shall have full responsibility for:

- a. Reviewing and checking all information and data concerning utilities.
- b. Locating all underground utilities shown or indicated in the Contract Documents which are affected by the Work.
- c. Coordination of the Work with the owners of all utilities during construction.
- d. Safety and protection of all utilities as provided in paragraph 6.17.
- e. Repair of any damage to utilities resulting from the Work in accordance with 4.4.4 and 4.5.

4.4.3 If Work is to be performed by any utility owner, the CONTRACTOR shall cooperate with such owners to facilitate the Work.

4.4.4 In the event of interruption to any utility service as a result of accidental breakage or as a result of being exposed or unsupported, the CONTRACTOR shall promptly notify the utility owner and the City Manager. If service is interrupted repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

4.4.5 City Utility Development Charges

The CITY shall not charge the CONTRACTOR a system development charge for constructing the utilities as shown in the Project Drawings. However, this does not nullify any other provision of Paragraph 4.4-Utilities.

4.5 Damaged Utilities:

When utilities are damaged by the CONTRACTOR, the utility owner shall have the choice of repairing the utility or having the CONTRACTOR repair the utility. In the following circumstances, the CONTRACTOR shall reimburse the utility owner for repair costs or provide at no cost to the utility owner or the CITY, all materials, equipment and labor necessary to complete repair of the damage:

- a. When the utility is shown or indicated in the Contract Documents.
- b. When the utility has been located by the utility owner.
- c. When no locate was requested by the CONTRACTOR for utilities shown or indicated in the Contract Documents.
- d. All visible utilities.
- e. When the CONTRACTOR could have, otherwise, reasonably been expected to be aware of such utility.

4.6 Utilities Not Shown or indicated.

If, while directly performing the Work, an underground utility is uncovered or revealed at the site which was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.19) identify the owner of such underground facility and give written notice thereof to that owner and to the Project Manager. The Project Manager will promptly review the underground utility to determine the extent to which the Contract Documents and the Work should be modified to reflect the impacts of the discovered utility. The Contract Documents will be amended or supplemented to the extent necessary through the issuance of a change document by the Project Manager. During such time, the CONTRACTOR shall be responsible for the safety and protection of such underground utility as provided in paragraph 6.17. The CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are directly attributable to the existence of any underground utility that

was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of.

4.7 Survey Control:

The CITY will identify sufficient horizontal and vertical control data to enable the CONTRACTOR to survey and layout the Work. All survey work shall be performed under the direct supervision of a registered Land Surveyor when required by paragraph 7.8.

ARTICLE 5 - BONDS, INSURANCE, AND INDEMNIFICATION

5.1 Delivery of Bonds:

When the CONTRACTOR delivers the executed Contract to the City Manager, the CONTRACTOR shall also deliver to the City Manager such bonds as the CONTRACTOR may be required to furnish in accordance with paragraph 5.2.

5.2 Bonds:

The CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount as shown on the Contract as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These bonds shall remain in effect for one year after the date of Final Completion and until all obligations under this Contract, except special guarantees as per 12.7, have been met. All bonds shall be furnished on forms provided by the CITY (or copies thereof) and shall be executed by such Sureties as are authorized to do business in the State of Alaska. The City Manager may at their option copy the Surety with notice of any potential default or liability.

5.3 Replacement of Bond and Surety:

If the Surety on any bond furnished in connection with this Contract is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.2, or otherwise becomes unacceptable to the CITY, or if any such Surety fails to furnish reports as to his financial condition as requested by the CITY, the CONTRACTOR shall within five days thereafter substitute another bond and Surety, both of which must be acceptable to CITY.

5.4 Insurance Requirements:

5.4.1 The CONTRACTOR shall carry and maintain throughout the life of this contract, at its own expense, insurance not less than the amounts and coverage herein specified, and the CITY OF DILLINGHAM, its employees and agents shall be named as additional insured under the insurance coverage so specified and where allowed, with respect to the performance of the work. There shall be no right of subrogation against the City or its agents performing work in connection with the work, and this waiver of subrogation shall be endorsed upon the policies. Insurance shall be placed with the companies acceptable to the CITY OF DILLINGHAM; and these policies providing coverage thereunder shall contain provisions that no cancellation or material changes in the policy shall become effective except upon 30 days prior written notice thereof to the CITY OF DILLINGHAM. Prior to commencement of the work, the CONTRACTOR shall furnish certificates to the CITY OF DILLINGHAM, in duplicate, evidencing that the insurance policy provisions required hereunder are in force. Acceptance by the CITY OF DILLINGHAM of deficient evidence does not constitute a waiver of contract requirements. The CONTRACTOR shall furnish the CITY OF DILLINGHAM with certified copies of policies upon request. The minimum coverage and limits required are as follows:

a. Worker's Compensation insurance in accordance with the statutory coverages required by the State of Alaska and Employers Liability insurance with limits not less than \$1,000,000 and, where applicable, insurance in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to the work, including but not limited to Harbor Workers Act, Maritime and the Outer Continental Shelf's Land Act.

b. Commercial General Liability with limits not less than \$1,000,000 per Occurrence and \$2,000,000 Aggregate for Bodily Injury and Property Damage, including coverage for Premises and Operations Liability, Products and Completed Operations Liability, Contractual Liability, Broad Form Property Damage Liability and Personal Injury Liability. Coverage shall not contain any exclusions of Explosion, Collapse, or Underground. Coverage is to be endorsed to include a per project aggregate. Additionally, such insurance shall be considered primary to any insurance carried by the CITY OF DILLINGHAM and the insurer will endorse the policy accordingly.

c. Commercial Automobile Liability on all owned, non-owned, hired and rented vehicles with limits of liability of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.

d. If applicable, CONTRACTOR's Equipment insurance covering all of the CONTRACTOR's equipment and machinery to be used in connection with the performance of the work specified in this contract. This coverage requirement may be waived at the discretion of the CITY OF DILLINGHAM if the CONTRACTOR self-insures the equipment and will waive all rights of recovery against the CITY OF DILLINGHAM in writing.

e. Umbrella/Excess Liability insurance coverage of not less than \$1,000,000 per occurrence and annual aggregate providing coverage in excess of General Liability, Auto Liability and Employers Liability.

f. If work involves use of aircraft, Aircraft Liability insurance covering all owned and non-owned aircraft with a per occurrence limit of not less than \$1,000,000.

g. If work involves use of watercraft, Protection and Indemnity insurance with limits not less than \$1,000,000 per occurrence, Hull and Machinery coverage is to be carried on the vessel for the full current market value. This coverage requirement may be waived at the discretion of the CITY OF DILLINGHAM if the CONTRACTOR self-insures the equipment and will waive all rights of recovery against the CITY OF DILLINGHAM in writing.

h. Where applicable, Professional liability insurance with limits of not less than \$1,000,000 per claim and \$1,000,000 aggregate, subject to a maximum deductible of \$10,000 per claim. The CITY OF DILLINGHAM has the right to negotiate increase of deductibles subject to acceptable financial information of the policy holder.

i. Where applicable, Pollution Liability insurance with a project limit of not less than \$1,000,000 to include coverage for Asbestos, Hazardous Materials, Lead or other related environmental hazards. The CITY OF DILLINGHAM has the right to negotiate increase of deductibles subject to acceptable financial information of the policyholder.

In the event Asbestos, Hazardous Materials, Lead or other related environmental hazards are transported by vehicle and/or marine vessel, the operator of such vehicles and vessels shall provide a Certificate of Insurance for the transportation of such materials (including loading and unloading) with limits of not less than \$1,000,000.

j. Builder's Risk Insurance: Coverage shall be on an "All Risk" completed value basis and protect the interests of the City, the CONTRACTOR and his subcontractors. Coverage shall include all materials, equipment and supplies that are intended for specific installation in the project while such materials, supplies and equipment are located at the project site and in transit from port of arrival to jobsite and while temporarily located away from the project site.

5.4.4 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the CONTRACTOR shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expense.

5.4.5 All insurance policies as described above are required to be written on an "occurrence" basis. In the event occurrence coverage is not available, the CONTRACTOR agrees to maintain "claim made" coverage for a minimum of two years after project completion.

5.4.6 If the CONTRACTOR employs subcontractors to perform any work hereunder, the CONTRACTOR agrees to require such subcontractors to obtain, carry, maintain, and keep in force during the time in which they are engaged in performing any work hereunder, policies of insurance which comply with the requirements as set forth in this section. . This requirement is applicable to subcontractors of any tier.

5.4.7 The CONTRACTOR is required to maintain all certificates of insurance during the course of the project and for a minimum of three (3) years following the completion of such project. It is further agreed, that upon request by the CITY OF DILLINGHAM, the CONTRACTOR will provide copies of any and all subcontractor certificates of insurance for review and compliance.

5.4.8 Failure by the CONTRACTOR to maintain the required insurance coverage or to comply with Section 5.4.6 above, may, at the option of the CITY OF DILLINGHAM, be deemed Defective Work and remedied in accordance with the contract.

5.5 Indemnification:

The CONTRACTOR and his Subcontractors will name the owner as "Additional Insured" and will provide a "Waiver of Subrogation".

The CONTRACTOR shall indemnify, save harmless, and defend the CITY and its agents and its employees from any and all claims or actions for injuries or damages sustained by any person arising directly or indirectly from the construction or the CONTRACTOR's performance of this contract; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the negligence of the CITY or its agents.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 Supervision of Work:

The CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. All Work under this Contract shall be performed in a skillful and workmanlike manner. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

6.2 Superintendence by CONTRACTOR:

The CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent. The City Manager shall be advised in writing of the superintendent's name, local address, and telephone number. This written advice is to be kept current until Final Acceptance by the CITY. The superintendent will be the CONTRACTOR's representative at the site and shall have full authority to act and sign documents on behalf of the CONTRACTOR.

All communications given to the superintendent shall be as binding as if given to the CONTRACTOR. The

CONTRACTOR shall cooperate with the City Manager in every way possible.

6.3 Character of Workers:

The CONTRACTOR shall provide a sufficient number of competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The CONTRACTOR shall at all times maintain good discipline and order at the site. The City Manager may, in writing, require the CONTRACTOR to remove from the Work any employee the City Manager deems incompetent, careless, or otherwise detrimental to the progress of the Work, but the City Manager shall have no duty to exercise this right.

6.4 CONTRACTOR to Furnish:

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

6.5 Materials and Equipment:

All materials and equipment shall be of specified quality and new, except as otherwise provided in the Contract Documents. If required by the City Manager, the CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the CITY or any of the CITY's Consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 2.3 or 2.4.

6.6 Anticipated Schedules:

6.6.1 Within reasonable time prior to the preconstruction conference the CONTRACTOR shall submit to the Project Manager for review an anticipated

progress schedule indicating the starting and completion dates of the various stages of the Work.

6.6.2 Within fifteen days after the date of the Notice to Proceed, the CONTRACTOR shall submit to the Project Manager for review:

Anticipated schedule of Shop Drawing submissions; and Anticipated Schedule of Values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by the CONTRACTOR at the time of submission

6.7 Finalizing Schedules:

Prior to processing the first Application for Payment the Project Manager and the CONTRACTOR will finalize schedules required by paragraph 6.6.

Acceptance by the CITY of the progress schedule, will neither impose on the CITY nor relieve the CONTRACTOR from full responsibility for the progress or scheduling of the Work. If accepted, the finalized schedule of Shop Drawing and other required submissions will be acceptable to the CITY as providing a workable arrangement for processing the submissions. If accepted the finalized Schedule of Values will be acceptable to the CITY as an approximation of anticipated value of Work accomplished over the anticipated Contract Time. Receipt and acceptance of a schedule submitted by the CONTRACTOR shall not be construed to assign responsibility for performance or contingencies to the CITY or relieve the CONTRACTOR of his responsibility to adjust his forces, equipment, and work schedules as may be necessary to insure completion of the Work within the prescribed Contract Time. Should the prosecution of the Work be discontinued for any reason, the CONTRACTOR shall notify the Project Manager at least 24 hours in advance of resuming operations.

6.8 Adjusting Schedules:

Upon substantial changes to the schedule or upon request the CONTRACTOR shall submit to the Project Manager for acceptance (to the extent indicated in paragraph 6.7 and the General Requirements) adjustments

in the schedules to reflect the actual present and anticipated progress of the Work.

6.9 Substitutes or "Or-Equal" Items:

6.9.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the Project Manager only if sufficient information is submitted by the CONTRACTOR which clearly demonstrates to the Project Manager that the material or equipment proposed is equivalent or equal in all aspects to that named. The procedure for review by the Project Manager will include the following as supplemented in the General Requirements.

6.9.2 Requests for review of substitute items of material and equipment will not be accepted by the Project Manager from anyone other than the CONTRACTOR.

6.9.3 If the CONTRACTOR wishes to furnish or use a substitute item of material or equipment, the CONTRACTOR shall make written application to the Project Manager for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not delay the CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the CITY for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty.

6.9.4 All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Project Manager in evaluating the proposed substitute.

The Project Manager may require the CONTRACTOR to furnish at the CONTRACTOR's expense additional data about the proposed substitute. The Project Manager may reject any substitution request which the Project Manager determines is not in the best interest of the CITY.

6.10 Substitute Means and Methods:

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Project Manager, if the CONTRACTOR submits sufficient information to allow the Project Manager to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the Project Manager will be similar to that provided in paragraph 6.9 as applied by the Project Manager and as may be supplemented in the General Requirements.

6.11 Evaluation of Substitution:

The Project Manager will be allowed a reasonable time within which to evaluate each proposed substitute. The Project Manager will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Project Manager's prior written acceptance which will be evidenced by either a Change Order or a Shop Drawing approved in accordance with Sections 6.20 and 6.21. The CITY may require the CONTRACTOR to furnish at the CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

6.12 Dividing the Work:

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

6.13 Subcontractors:

The CONTRACTOR may utilize the services of licensed specialty Subcontractors on those parts of the Work which, under normal contracting practices, are performed by licensed specialty Subcontractors, in accordance with the following conditions:

6.13.1 The CONTRACTOR shall not award any Work to any Subcontractor without prior written approval of the Project Manager. This approval will not be given until the CONTRACTOR submits to the Project Manager a written statement concerning the proposed award to the Subcontractor which shall contain required E.E.O. documents, evidence of insurance, and a copy of the proposed subcontract executed by the subcontractor. No acceptance by the Project Manager of any such Subcontractor shall constitute a waiver of any right of the CITY to reject Defective Work.

6.13.2 The CONTRACTOR shall be fully responsible to the CITY for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions.

6.13.3 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate written agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the CITY and contains waiver provisions as required by paragraph 13.7 and termination provisions as required by Article 14.

6.13.4 Nothing in the Contract Documents shall create any contractual relationship between the CITY and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the CITY to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Regulatory Requirements. The CITY will not undertake to settle any differences between or among the CONTRACTOR, Subcontractors, or Suppliers.

6.13.5 The CONTRACTOR and Subcontractors shall coordinate their work and facilitate general progress of Work. Each trade shall afford other trades every reasonable opportunity for installation of their work and storage of materials. If cooperative work of one trade must be altered due to lack of proper supervision, or failure to make proper provisions in time by another trade, such conditions shall be remedied by the CONTRACTOR with no change in Contract Price or Contract Time.

6.13.6 The CONTRACTOR shall include on his own payrolls any person or persons working on the contract who are not covered by written subcontract, and shall

ensure that all Subcontractors include on their payrolls all persons performing work under the direction of the Subcontractor.

6.14 Use of Premises:

The CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project limits and approved remote storage sites and lands and areas identified in and permitted by Regulatory Requirements, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the CITY by any such owner or occupant because of the performance of the Work, the CONTRACTOR shall hold the CITY and its agencies harmless.

6.15 Structural Loading:

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

6.16 Record Documents:

The CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Field Memos, Work Orders, Change Orders, Supplemental Agreements, and written interpretations and clarifications (issued pursuant to paragraph 3.6) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the Project Manager for reference and copying. Upon completion of the Work, the annotated record documents, samples and Shop Drawings will be delivered to the Project Manager. Record documents shall accurately record variations in the Work which vary from requirements shown or indicated in the Contract Documents.

6.17 Safety and Protection:

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

6.17.1 All employees on the Work and other persons and organizations who may be affected thereby;

6.17.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.17.3 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.

The CONTRACTOR shall comply with all applicable Regulatory Requirements of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property 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 of them 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 Contract Price or Contract Time except as stated in 4.6, except damage or loss attributable to unforeseeable causes beyond the control of and without the fault or negligence of the CONTRACTOR, including but not restricted to acts of God, or 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).

6.18 Safety Representative:

The CONTRACTOR shall designate a responsible safety representative at the site. This person shall be the CONTRACTOR's superintendent unless otherwise designated in writing by the CONTRACTOR to the Project Manager.

6.19 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 Project Manager prompt written notice if the CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents is required because of the action taken in response to an emergency, a change will be authorized by one of the methods indicated in Paragraph 9.2, as determined appropriate by the Project Manager.

6.20 Shop Drawings and Samples:

6.20.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, the CONTRACTOR shall submit to the Project Manager for review and approval in accordance with the accepted schedule of Shop Drawing submissions the required number of all Shop Drawings, which will bear a stamp or specific written indication that the CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as the Project Manager may require. The date shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Project Manager to review the information as required.

6.20.2 The CONTRACTOR shall also submit to the Project Manager for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that the CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

6.20.3 Before submission of each Shop Drawing or sample the CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and

reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.20.4 At the time of each submission the CONTRACTOR shall give the Project Manager specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the Project Manager for review and approval of each such variation. All variations of the proposed shop drawing from that specified will be identified in the submission and available maintenance, repair and replacement service will be indicated. The submittal will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such variation, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the CITY in evaluating the proposed variation. If the variation may result in a change of Contract Time or Price, or contract responsibility, and is not minor in nature; the CONTRACTOR must submit a written request for Change Order with the variation to notify the CITY of his intent. The CITY may require the CONTRACTOR to furnish at the CONTRACTOR's expense additional data about the proposed variation. The Project Manager may reject any variation request which the Project Manager determines is not in the best interest of the CITY.

6.21 Shop Drawing and Sample Review:

6.21.1 The Project Manager will review with reasonable promptness Shop Drawings and samples, but the Project Manager's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate acceptance of the assembly in which the item functions. The CONTRACTOR shall make corrections required by the Project Manager and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. The CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by the Project Manager on previous submittals.

6.21.2 The Project Manager's review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless the CONTRACTOR has in writing advised the Project Manager of each such variation at the time of submission as required by paragraph 6.20.4. The Project Manager, if they so determine, may give written approval of each such variation by Change Order, except that, if the variation is minor and no Change Order has been requested a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review comments shall suffice as a modification. No approval by the Project Manager will relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.20.3.

6.21.3 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to the Project Manager's review of the pertinent submission will be the sole expense and responsibility of the CONTRACTOR.

6.22 Maintenance During Construction:

The CONTRACTOR shall maintain the Work during construction and until Substantial Completion, at which time the responsibility for maintenance shall be established in accordance with paragraph 13.10.

6.23 Continuing the Work:

The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the CITY. No work shall be delayed or postponed pending resolution of any disputes, disagreements, or claims except as the CONTRACTOR and the City Manager may otherwise agree in writing.

6.24 Consent to Assignment:

The CONTRACTOR shall obtain the prior written consent of the City Manager to any proposed assignment of any interest in, or part of this Contract. The consent to any assignment or transfer shall not operate to relieve the CONTRACTOR or his Sureties of any of his or its obligations under this Contract or the Performance Bonds. Nothing herein contained shall be construed to hinder, prevent, or affect an assignment of monies due, or to become due hereunder, made for the benefit of the CONTRACTOR's creditors pursuant to law.

6.25 Use of Explosives:

6.25.1 When the use of explosives is necessary for the prosecution of the Work, the CONTRACTOR shall exercise the utmost care not to endanger life or property, including new Work and shall follow all Regulatory Requirements applicable to the use of explosives. The CONTRACTOR shall be responsible for all damage resulting from the use of explosives.

6.25.2 All explosives shall be stored in a secure manner in compliance with all Regulatory Requirements, and all such storage places shall be clearly marked. Where no Regulatory Requirements apply, safe storage shall be provided not closer than 1,000 feet from any building, camping area, or place of human occupancy.

6.25.3 The CONTRACTOR shall notify each public utility owner having structures in proximity to the site of his intention to use explosives. Such notice shall be given sufficiently in advance to enable utility owners to take such steps as they may deem necessary to protect their property from injury. However, the CONTRACTOR shall be responsible for all damage resulting from the use of the explosives, whether or not, utility owners act to protect their property.

6.26 CONTRACTOR's Records:

6.26.1 Records of CONTRACTOR and Subcontractors relating to personnel, payrolls, invoices of materials, and any and all other data relevant to the performance of the Contract, must be kept on a generally recognized accounting system. Such records must be available during normal work hours to the Project Manager for purposes of investigation to ascertain compliance with Regulatory Requirements and provision of the Contract Documents.

6.26.2 Payroll records must contain the name and address of each employee, his correct classification, rate of pay, daily and weekly number of hours of work, deductions made, and actual wages paid. The CONTRACTOR and Subcontractors shall make employment records available for inspection by the Project Manager and representatives of the U.S. and/or State Department of Labor and will permit such representatives to interview employees during working hours on the Project.

6.26.3 Records of all communications between the CITY and the CONTRACTOR and other parties, where such communications affected performance of this Contract, must be kept by the CONTRACTOR and maintained for a

period of three years from Final Acceptance. The CITY or its assigned representative may perform an audit of these records during normal work hours after written notice to the CONTRACTOR.

ARTICLE 7 - LAWS AND REGULATIONS

7.1 Laws to be Observed

The CONTRACTOR shall keep fully informed of all Federal and State Regulatory Requirements and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The CONTRACTOR shall at all times observe and comply with all such Regulatory Requirements, orders and decrees; and shall protect and indemnify the CITY and its representatives against claim or liability arising from or based on the violation of any such Regulatory Requirement, order, or decree whether by the CONTRACTOR, Subcontractor, or any employee of either. Except where otherwise expressly required by applicable Regulatory Requirements, the CITY shall not be responsible for monitoring CONTRACTOR's compliance with any Regulatory Requirements.

7.2 Permits, Licenses, and Taxes

7.2.1 The CONTRACTOR shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work. As a condition of performance of this Contract, the CONTRACTOR shall pay all Federal, State and local taxes incurred by the CONTRACTOR, in the performance of the Contract. Proof of payment of these taxes is a condition precedent to final payment by the CITY under this Contract.

7.2.2 The CONTRACTOR's certification that taxes have been paid (as contained in the Release of Contract) will be verified with the Department of Revenue and Department of Labor, prior to final payment.

7.2.3 If any Federal, State or local tax is imposed, charged, or repealed after the date of Bid opening and is made applicable to and paid by the CONTRACTOR on the articles or supplies herein contracted for, then the Contract shall be increased or decreased accordingly by a Change Order.

7.3 Patented Devices, Materials and Processes

If the CONTRACTOR employs any design, device, material, or process covered by letters of patent, trademark or copyright, the CONTRACTOR shall provide for such use by suitable legal agreement with the patentee or owner. The CONTRACTOR and the Surety shall indemnify and save harmless the CITY and its agents or any affected third party from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the CITY for any costs, expenses, and damages which it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the Work.

7.4 Compliance of Specifications and Drawings:

If the CONTRACTOR observes that the Specifications and Drawings supplied by the CITY are at variance with any Regulatory Requirements, CONTRACTOR shall give the City Manager prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 9.2. as determined appropriate by the City Manager. If the CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Regulatory Requirements, and without such notice to the City Manager, the CONTRACTOR shall bear all costs arising therefrom; however, it shall not be the CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings supplied by the CITY are in accordance with such Regulatory Requirements.

7.5 Accident Prevention:

The CONTRACTOR shall comply with AS 18.60.075 and all pertinent provisions of the Construction Code Occupational Safety and Health Standards issued by the Alaska Department of Labor.

7.6 Sanitary Provisions:

The CONTRACTOR shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees and CITY representatives as may be necessary to comply with the requirements of the State and local Boards of Health, or of other bodies or tribunals having jurisdiction.

7.7 Business Registration

7.7.1 Comply with AS 08.18.011, as follows: "it is unlawful for a person to submit a bid or work as a contractor until he has been issued a certificate of registration by the Department of Commerce. A partnership or joint venture shall be considered registered if one of the general partners or venturers whose name appears in the name under which the partnership or venture does business is registered."

7.7.2 The CONTRACTOR shall obtain a City of Dillingham Business License prior to commencement of the Work to the extent required by the City of Dillingham Code of Ordinances section 9.30.101.

7.8 Professional Registration and Certification:

All craft trades, architects, engineers and land surveyors, electrical administrators, explosive handlers, and welders employed under the Contract shall specifically comply with applicable provisions of AS 08.18, 08.48, 08.40, 08.52, and 08.99. Provide copies of individual licenses within seven days following a request from the City Manager.

7.9 Local Building Codes:

The CONTRACTOR shall comply with AS 35.10.025 which requires construction in accordance with applicable local building codes including the obtaining of required permits. City of Dillingham permits required for the work are identified in the Supplemental Conditions.

7.10 Air Quality Control:

The CONTRACTOR shall comply with all applicable provision of AS 46.03.04 as pertains to Air Pollution Control.

7.11 Archaeological or Paleontological Discoveries:

When the CONTRACTOR's operation encounters historic or prehistoric artifacts, burials, remains of dwelling sites, or paleontological remains, such as shell heaps, land or sea mammal bones or tusks, the CONTRACTOR shall cease operations immediately and notify the City Manager. No artifacts or specimens shall be further disturbed or removed from the ground and no further operations shall be performed at the site until so directed. Should the City Manager order suspension of the CONTRACTOR's operations in order to protect an archaeological or historical finding, or order the

CONTRACTOR to perform extra work, such shall be covered by an appropriate Contract change document.

7.12 Alaska Forest Products:

Pursuant to AS 36.15.010, timber, lumber, and manufactured lumber products originating from local forests shall be used, whenever practicable or specified.

7.13 Preferential Employment:

To the fullest extent allowed by law, the CONTRACTOR shall comply with AS 36.10, as amended, which provides for preferential employment of Alaska residents.

7.14 Wages and Hours of Labor:

7.14.1 One certified copy of all payrolls shall be submitted weekly to the State Department of Labor to assure compliance with AS 36.05.040, Filing Schedule of Employees Wages Paid and Other Information. The prime CONTRACTOR shall be responsible for the submission of certified copies of payrolls of all Subcontractors. The certification shall affirm that the payrolls are current and complete, that the wage rates contained therein are not less than the applicable rates referenced in these Contract Documents, and that the classification set forth for each laborer or mechanic conforms with the work he performed. The CONTRACTOR and his Subcontractors shall attend all hearings and conferences and produce such books, papers, and documents all as requested by the Department of Labor. Should Federal funds be involved, the Contracting Agency shall also receive a copy of the CONTRACTOR's certified payrolls.

7.14.2 The following Labor provisions shall also apply to this Contract:

- a. The CONTRACTOR and his Subcontractors shall pay all employees unconditionally and not less than once a week;
- b. 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;

c. 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;

d. the CITY shall withhold so much of the accrued payments as is necessary to pay laborers, mechanics, or field surveyors employed by the CONTRACTOR or Subcontractors the difference between

1. the rates of wages required by the contract to be paid laborers, mechanics, or field surveyors on the work, and

2. the rates of wages in fact received by laborers, mechanics or field surveyors.

7.15 Overtime Work Hours and Compensation:

Pursuant to 40 U.S.C. 327-330 and AS 23.10.060, the CONTRACTOR shall not require nor permit any laborer or mechanic in any workweek in which he is employed on any work under this Contract to work in excess of eight hours in any Calendar Day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one half times his basic rate of pay for all such hours worked in excess of eight hours in any Calendar Day or in excess of forty hours in such workweek whichever is the greater number of overtime hours. In the event of any violation of this provision, the CONTRACTOR shall be liable to any affected employee for any amounts due and penalties and to the CITY for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of this provision in the sum of \$10.00 for each Calendar Day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by this paragraph.

7.16 Covenant Against Contingent Fees:

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, the CITY shall

have the right to annul this Contract without liability or, in its discretion, to deduct price of consideration from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

7.17 Officials Not to Benefit:

No member of or delegate to the U.S. Congress, the State Legislature, Dillingham City Council or other State or City Officials shall be admitted to any share or part of this Contract, nor to any benefit that may arise therefrom. However, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefits.

7.18 Personal Liability of Public Officials:

In carrying out any of the provisions thereof, or in exercising any power or authority granted to the City Manager by the Contract, there will be no liability upon the City nor upon its agents or authorized representatives, either personally or as officials of the State of Alaska, it being always understood that in such matters they act as agents and representatives of the CITY.

7.19 Limitations of Action:

Owner shall have until six years from the date damage to any improvement to real property constructed pursuant to this Agreement is actually discovered by Owner in which to being any claim related to such damage against any person who may be liable to Owner in whole or in part for such damage including, but not limited to, Contractor. Any shorter period in which to make such a claim imposed by AS 09.10.055 is expressly excluded from this Agreement.

ARTICLE 8 - OTHER WORK

8.1 Related Work at Site:

8.1.1 The CITY reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the Contract.

8.1.2 When separate contracts are let within the limits of the Project, the CONTRACTOR shall conduct his Work so

as not to interfere with or hinder the work being performed by other contractors. The CONTRACTOR shall join his work with that of the others in an acceptable manner and shall perform it in proper sequence to that of others.

8.1.3 If the fact that other such work is to be performed is identified or shown in the Contract Documents the CONTRACTOR shall assume all liability, financial or otherwise, in connection with this Contract and indemnify and save harmless the CITY OF DILLINGHAM and its agents from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the CONTRACTOR because of the presence and operations of other contractors.

8.1.4 If the fact that such other work is to be performed was not identified or shown in the Contract Documents, written notice thereof will be given to the CONTRACTOR prior to starting any such other work. If the CONTRACTOR believes that such performance will require an increase in Contract Price or Contract Time, the CONTRACTOR shall notify the City Manager of such required increase within fifteen (15) calendar days following receipt of the City Manager's notice. Should the City Manager find such increase(s) to be justified, a Change Order will be executed.

8.2 Access, Cutting, and Patching:

The CONTRACTOR shall afford each utility owner and any other contractor who is a party to such a direct contract with the CITY (or the CITY, if the CITY is performing the additional work with the CITY's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate the Work with the work of others. The CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work, the CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter such other work with the written consent of the City Manager. The duties and responsibilities of the CONTRACTOR under this paragraph are for the benefit of other contractors to the extent that there are comparable provisions for the benefit of the CONTRACTOR in said direct contracts between the CITY and other contractors.

8.3 Defective Work by Others:

If any part of the CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor, utility owner, or the CITY, the CONTRACTOR shall inspect and promptly report to the City Manager in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. The CONTRACTOR's failure to so report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in the other work.

8.4 Coordination:

If the CITY contracts with others for the performance of other work at the site, City Manager will have authority and responsibility for coordination of the activities among the various prime contractors.

ARTICLE 9 - CHANGES

9.1 CITY's Right to Change

Without invalidating the Contract and without notice to any Surety, the CITY may, at any time or from time to time, order additions, deletions or revisions in the Work within the general scope of the Contract, including but not limited to changes:

9.1.1 In the Contract Documents;

9.1.2 In the method or manner of performance of the Work;

9.1.3 In City-furnished facilities, equipment, materials, services, or site;

9.1.4 Directing acceleration in the performance of the Work.

9.2 Authorization of Changes within the General Scope.

Additions, deletions, or revisions in the Work within the general scope of the Contract as specified in 9.1 shall be authorized by one or more of the following ways:

9.2.1 Directive (pursuant to paragraph 9.3)

9.2.2 A Change Order (pursuant to paragraph 9.5)

9.2.3 CITY's acceptance of Shop Drawing variations from the Contract Documents as specifically identified by the CONTRACTOR as required by paragraph 6.20.4.

9.3 Directive

9.3.1 The Project Manager shall provide written clarification or interpretation of the contract documents (pursuant to paragraph 3.6).

9.3.2 The Project Manager may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents.

9.3.3 The Project Manager may order the CONTRACTOR to correct Defective Work or methods which are not in conformance with the Contract Documents.

9.3.4 The Project Manager may direct the commencement or suspension of Work or emergency related work (as provided in paragraph 6.19).

9.3.5 Upon the issuance of a Directive to the CONTRACTOR by the Project Manager, the CONTRACTOR shall immediately proceed with the performance of the work as prescribed by such Directive.

9.3.6 If the CONTRACTOR believes that the changes noted in a Directive may cause an increase in the Contract Price or an extension of Contract Time, the CONTRACTOR shall immediately provide written notice to the Project Manager depicting such increases before proceeding with the Directive, except in the case of an emergency. If the Project Manager finds the increase in Contract Price or the extension of Contract Time justified, a Change Order will be issued. If however, the Project Manager does not find that a Change Order is justified, the Project Manager may direct the CONTRACTOR to proceed with the work. The CONTRACTOR shall cooperate with the Project Manager in keeping complete daily records of the cost of such work. If a Change Order is ultimately determined to be justified, in the absence of agreed prices and unit prices, payment for such work will be made on a cost of the work basis as provided in 10.4.

9.4 Change Order

A change in Contract Time, Contract Price, or responsibility may be made for changes within the scope of the Work only by Change Order. Upon receipt of an executed Change Order, the CONTRACTOR shall promptly proceed with the work involved which will be performed under the applicable conditions of the Contract Documents except as otherwise specifically provided. Changes in Contract Price and Contract Time shall be made in accordance with Article 10 and 11.

9.5 Shop Drawing Variations

Variations by shop drawings shall only be eligible for consideration under 9.4 when the conditions affecting the price, time, or responsibility are identified by the CONTRACTOR in writing and a request for a Change Order is submitted as per 6.20.4.

9.6 Changes Outside the General Scope; Supplemental Agreement

Any change which is outside the general scope of the Contract, as determined by the Project Manager, must be authorized by the appropriate representatives of the CITY and the CONTRACTOR.

9.7 Unauthorized Work:

The CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in this Article 9, except in the case of an emergency as provided in paragraph 6.19 and except in the case of uncovering Work as provided in paragraph 12.4.2.

9.8 Notification of Surety:

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a Surety, the giving of any such notice will be the CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

9.9 Differing Site Conditions:

9.9.1 The CONTRACTOR shall promptly, and before such conditions are disturbed (except in an emergency as permitted by paragraph 6.19), notify the Project Manager

in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, and which could not have been discovered by a careful examination of the site, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Project Manager shall promptly investigate the conditions, and if the Project Manager finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or time required for, performance of this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly.

9.9.2 Any claim for additional compensation by the CONTRACTOR under this clause shall be made in accordance with Article 15 and shall not be allowed unless the CONTRACTOR has first given the notice required by this Contract. In the event that the Project Manager and the CONTRACTOR are unable to reach an agreement concerning an alleged differing site condition, the CONTRACTOR will be required to keep an accurate and detailed record which will indicate the actual cost of the work done under the alleged differing site condition. Failure to keep such a record shall be a bar to any recovery by reason of such alleged differing site conditions. The Project Manager shall be given the opportunity to supervise and check the keeping of such records.

ARTICLE 10 - CONTRACT PRICE; COMPUTATION AND CHANGE

10.1 Contract Price:

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without change in the Contract Price. The Contract Price may only be changed by a Change Order or Supplemental Agreement.

10.2 Claim for Price Change:

Any claim for an increase or decrease in the Contract Price shall be submitted in accordance with the terms of Article 15, and shall not be allowed unless notice requirements of this Contract have been met.

10.3 Change Order Price Determination:

The value of any work covered by a Change Order for an increase or decrease in the Contract Price shall be determined in one of the following ways:

10.3.1 Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 10.9.1

10.3.2 By mutual acceptance of a lump sum price which includes overhead and profit.

10.3.3 When 10.3.1 and 10.3.2 are inapplicable, on the basis of the Cost of the Work (determined as provided in paragraphs 10.4 and 10.5) plus a CONTRACTOR'S fee for overhead and profit (determined as provided in paragraph 10.6).

10.4 Cost of the Work:

The term Cost of the Work means the sum of all costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the work. Except as otherwise may be agreed to in writing by the CITY, such costs shall be in amount no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 10.5:

10.4.1 Payroll costs for employees in the direct employ of the CONTRACTOR in the performance of the work under schedules of job classifications agreed upon by the CITY and the CONTRACTOR. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by the CITY.

10.4.2 Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and Suppliers' field services required

in connection therewith. All cash discounts shall accrue to the CONTRACTOR unless the CITY deposits funds with the CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the CITY. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the CITY, and the CONTRACTOR shall make provisions so that they may be obtained.

10.4.3 Payments made by the CONTRACTOR to Subcontractors for work performed by Subcontractors. If required by the CITY, CONTRACTOR shall obtain competitive quotes from Subcontractors or Suppliers acceptable to the CONTRACTOR and shall deliver such quotes to the CITY who will then determine which quotes will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as the CONTRACTOR's Cost of Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

10.4.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed for services necessary for the completion of the work.

10.4.5 Supplemental costs including the following:

- a. The proportion of necessary transportation, travel and subsistence expenses of the CONTRACTOR's employees incurred in discharge of duties connected with the work.
- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remain the property of the CONTRACTOR.
- c. Rentals of all construction equipment and machinery and the parts thereof whether rented from the CONTRACTOR or others in accordance with rental agreements approved by the CITY and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.

d. Sales, consumer, use or similar taxes related to the work, and for which the CONTRACTOR is liable, imposed by Regulatory Requirements.

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

f. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by the CONTRACTOR in connection with the performance and furnishing of the Work provided they have resulted from causes other than the negligence of the CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining the CONTRACTOR's Fee. If, however, any such loss or damage requires reconstruction and the CONTRACTOR is placed in charge thereof, the CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraphs 10.6.2.a and 10.6.2.b.

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

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the work.

i. Cost of premiums for additional bonds and insurance required because of changes in the work and premiums for property insurance coverage within the limits of the deductible amounts established by the CITY in accordance with Article 5.

10.5 Excluded Costs:

The term Cost of the Work shall not include any of the following:

10.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principles (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors,

accountants, purchasing and contracting agency, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.4.1 or specifically covered by paragraph 10.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR's Fee.

10.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

10.5.3 Any part of CONTRACTOR's capital expenses including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

10.5.4 Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 10.4.5.i above).

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

10.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.4.

10.6 CONTRACTOR's Fee:

The CONTRACTOR's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

10.6.1 A mutually acceptable fixed fee; or if none can be agreed upon.

10.6.2 A fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under paragraphs 10.4.1 and 10.4.2, the CONTRACTOR's Fee shall be twenty percent;

b. For costs incurred under paragraph 10.4.3, the CONTRACTOR's Fee shall be fifteen percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all subcontractors shall be fifteen percent;

c. No fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;

d. The amount of credit to be allowed by the CONTRACTOR to the CITY for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's Fee by an amount equal to ten percent of the net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR's Fee shall be computed on the basis of the net change in accordance with paragraphs 10.6.2.a through 10.6.2.d, inclusive.

10.7 Cost Breakdown:

Whenever the cost of any work is to be determined pursuant to paragraphs 10.4 and 10.5, the CONTRACTOR will submit in form acceptable to the CITY an itemized cost breakdown together with supporting data.

10.8 Cash Allowances:

It is understood the CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to the City Manager. CONTRACTOR agrees that:

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

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

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

10.9 Unit Price Work:

10.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR will be made by the CITY in accordance with paragraph 10.10.

10.9.2 Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR's overhead and profit for each separately identified item. If the "Basis of Payment" clause in the Contract Documents relating to any unit price in the bid schedule requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Contract Documents.

10.9.3 Payment to the CONTRACTOR shall be made only for the actual quantities of work performed and accepted or materials furnished, in conformance with the Contract Documents. When the accepted quantities of work or materials vary from the quantities stated in the bid schedule, or change documents, the CONTRACTOR shall accept as payment in full, payment at the stated unit prices for the accepted quantities of work and materials furnished, completed and accepted; except as provided below:

a. When the quantity of work to be done or material to be furnished under any item, for which the total cost of the item exceeds 10% of the total Contract Price, is increased by more the 25 per cent of the quantity stated in the bid schedule, or change documents, either party to the Contract, upon demand, shall be entitled to an equitable

unit price adjustment on the portion of the work above 125 per cent of the quantity stated in the bid schedule.

b. When the quantity of work to be done or material to be furnished under any major item, for which the total cost of the item exceeds 10% of the total Contract Price, is decreased by more than 25 per cent of the quantity stated in the bid schedule, or change documents either party to the contract, upon demand, shall be entitled to an equitable price adjustment for the quantity of work performed or material furnished, limited to a total payment of not more the 75 per cent of the amount originally bid for the item.

10.10 Determinations for Unit Prices:

The Project Manager will determine the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR . The Project Manager will review with the CONTRACTOR preliminary determinations on such matters before certifying the prices on the Bid Schedule. The Project Manager's certification thereon will be final and binding on the CONTRACTOR, unless, within ten days after the date of any such decisions, the CONTRACTOR delivers to the Project Manager written notice of intention to appeal from such a decision.

ARTICLE 11 - CONTRACT TIME; COMPUTATION AND CHANGE

11.1 Commencement of Contract Time; Notice to Proceed:

The Contract Time will commence to run on the day indicated in the Notice to Proceed.

11.2 Starting the Work:

No work on contract items shall be performed before the effective date of the Notice to Proceed. The CONTRACTOR shall notify the Project Manager at least 24 hours in advance of the time actual construction operations will begin. The CONTRACTOR may request a limited Notice to Proceed after award has been made, to permit them to order long lead materials which could cause delays in project completion. However, granting any request is within the sole discretion of the Project Manager, and refusal or failure to grant a limited Notice to

Proceed shall not be a basis for claiming for delay, extension of time, or alteration of price.

11.3 Computation of Contract Time:

11.3.1 When the contract time is specified on a calendar days basis, all work under the contract shall be completed within the number of calendar days specified. The count of contract time begins on the day following receipt of the Notice to Proceed by the CONTRACTOR, if no starting day is stipulated therein.

Calendar days shall continue to be counted against contract time until and including the date of Final Completion of the Work.

11.3.2 When the Contract completion time is specified as a fixed calendar date, it shall be the date of Final Completion.

11.4 Time Change:

The Contract Time may only be changed by a Change Order or Supplemental Agreement.

11.5 Extension Due to Delays:

The right of the CONTRACTOR to proceed shall not be terminated nor the CONTRACTOR charged with liquidated or actual damages because of any delays to the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to the following: acts of God or of the public enemy, acts of the CITY in contractual capacity, acts of another contractor in the performance of a contract with the CITY, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and delays of Subcontractors or Suppliers due to such causes. Any delay in receipt of materials on the site, caused by other than one of the specifically mentioned occurrences above, does not of itself justify a time extension. Provided, that the CONTRACTOR shall within twenty four (24) hours from the beginning of any such delay (unless the Project Manager shall grant a further period of the time prior to the date of final settlement of the Contract) notify the Project Manager in writing of the cause of delay. The Project Manager shall ascertain the facts and the extent of the delay and extend the time for completing the Work when the findings of fact justify such an extension.

11.6 Essence of Contract:

All time limits stated in the Contract Documents are of the essence of the Contract.

11.7 Reasonable Completion Time:

It is expressly understood and agreed by and between the CONTRACTOR and the CITY that the date of beginning and the time for Final Completion of the Work described herein are reasonable times for the completion of the Work.

11.8 Delay Damages:

Whether or not the CONTRACTOR's right to proceed with the Work is terminated, he and his sureties shall be liable for damages resulting from his refusal or failure to complete the Work within the specified time.

Liquidated damages for delay shall be paid by the CONTRACTOR or his Surety to the Department in the amount as specified in the Supplementary Conditions for each Calendar Day the completion of the Work or any part thereof is delayed beyond the Contract Time required by the Contract, or any extension thereof. If such amount of liquidated damages is not established by the Contract Documents, then the CONTRACTOR and his Surety shall be liable to the Department for any actual damages occasioned by such delay. The CONTRACTOR acknowledges that the liquidated damages established herein are not a penalty but rather constitute an estimate of damages that the Department will sustain by reason of delayed completion. These liquidated damages are intended as compensation for losses difficult to estimate, and include those items enumerated in the Supplementary Conditions.

These damages will continue to run both before and after termination in the event of default termination. These liquidated damages do not cover excess costs of completion or the City's costs, fees, and charges related to procurement. If a default termination occurs, the CONTRACTOR or his Surety shall pay in addition to these damages, all excess costs and expenses related to completion as provided by Article 14.2.5.

ARTICLE 12 - QUALITY ASSURANCE

12.1 Warranty and Guaranty:

The CONTRACTOR warrants and guarantees to the CITY that all Work will be in accordance with the Contract Documents and will not be Defective. Prompt notice of all defects shall be given to the CONTRACTOR. All Defective Work, whether or not in place, may be rejected, corrected or accepted as provided for in this Article.

12.2 Access to Work:

The CITY and the CITY's representatives, testing agencies and governmental agencies with jurisdiction interests will have access to the Work at reasonable times for their observation, inspecting and testing. The CONTRACTOR shall provide proper and safe conditions for such access.

12.3 Tests and Inspections:

12.3.1 The CONTRACTOR shall give the Project Manager timely notice of readiness of the Work for all required inspections, tests or approvals.

12.3.2 If Regulatory Requirements of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, the CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish the Project Manager the required certificates of inspection, testing or approval. The CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with CITY's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to the CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by the CONTRACTOR. The CITY may perform additional tests and inspections which it deems necessary to insure quality control. All such failed tests or inspections shall be at the CONTRACTOR's expense.

12.3.3 If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of the Project Manager, it must, if requested by the Project Manager, be uncovered for observation. Such uncovering shall be at the CONTRACTOR's expense unless the CONTRACTOR has given the Project Manager timely notice of CONTRACTOR's intention to cover the same and the

Project Manager has not acted with reasonable promptness in response to such notice.

12.3.4 Neither observations nor inspections, test or approvals by the CITY of others shall relieve the CONTRACTOR from the CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

12.4 Uncovering Work:

12.4.1 If any Work is covered contrary to the written request of the Project Manager, it must, if requested by the Project Manager, be uncovered for the Project Manager's observation and replaced at the CONTRACTOR's expense.

12.4.2 If the Project Manager considers it necessary or advisable that covered Work be observed, inspected or tested, the CONTRACTOR, at the Project Manager's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Project Manager may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, the CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) and the CITY shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be Defective, the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

12.5 CITY May Stop the Work:

If the Work is Defective, or the CONTRACTOR fails to supply suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Project Manager may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Project Manager to stop the Work shall not give rise to any duty on the part of the Project Manager to exercise this right for the benefit of the CONTRACTOR or any other party.

12.6 Correction or Removal of Defective Work:

If required by the Project Manager, the CONTRACTOR shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Project Manager, remove it from the site and replace it with Work which conforms to the requirements of the Contract Documents. The CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

12.7 One Year Correction Period:

If within one year after the date of Final Completion or such longer period of time as may be prescribed by Regulatory Requirements or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, the CONTRACTOR shall promptly, without cost to the CITY and in accordance with the Project Manager's written instructions, either correct such Defective Work, or, if it has been rejected by the Project Manager, remove it from the site and replace it with conforming Work. If the CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the CITY may have the Defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by the CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service for the benefit of the CITY before Substantial Completion of all the Work, the correction period for the item may begin on an earlier date if so provided in the Specifications or by Change Order. Provisions of this paragraph are not intended to shorten the Statute of Limitations for bringing an action.

12.8 Acceptance of Defective Work:

Instead of requiring correction or removal and replacement of Defective Work, the Project Manager may accept defective Work, the CONTRACTOR shall bear all direct, indirect and consequential costs attributable to the Project Manager's evaluation of and determination to accept such Defective Work (costs to include but not be

limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the CITY shall be entitled to an appropriate decrease in the Contract Price. If the CITY has already made final payment to the CONTRACTOR, an appropriate amount shall be paid by the CONTRACTOR or his Surety to the CITY.

12.9 CITY May Correct Defective Work:

If the CONTRACTOR fails within a reasonable time after written notice from the Project Manager to proceed to correct Defective Work or to remove and replace rejected Work as required by the Project Manager in accordance with paragraph 12.6, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the CITY may, after seven days' written notice to the CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the Project Manager may exclude the CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend the CONTRACTOR's services related thereto, take possession of the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or approved remote storage sites or for which the CITY has paid the CONTRACTOR but which are stored elsewhere, the CONTRACTOR shall allow the Project Manager and his authorized representatives such access to the site as may be necessary to enable the Project Manager to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the CITY or its agents in exercising such rights and remedies will be charge against the CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the CITY shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all cost of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the CONTRACTOR's Defective Work. The CONTRACTOR

shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the Project Manager of the CITY's rights and remedies hereunder.

ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION

13.1 Schedule of Values:

The Schedule of Values established as provided in paragraph 6.6 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Project Manager. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.2 Preliminary Payments:

Upon approval of the Schedule of Values the CONTRACTOR may be paid for direct costs substantiated by paid invoices and other prerequisite documents required by the General Requirements. Direct costs shall include the cost of Bonds, insurance, approved materials stored on the site or at approved remote storage sites, deposits required by a Supplier prior to fabricating materials, and other approved direct mobilization costs substantiated as indicated above. These payments shall be included as a part of the total Contract Price as stated in the Contract.

13.3 Application for Progress Payment:

The CONTRACTOR shall submit to the Project Manager for review an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. Progress payments will be made as the Work progresses on a monthly basis or twice a month when requested by the CONTRACTOR, but only when the approved invoice exceeds \$10,000.00.

13.4 Review of Application for Progress Payment:

Project Manager will, either indicate in writing a recommendation of payment, or return the Application for Payment to the CONTRACTOR indicating in writing the Project Manager's reasons for refusing to recommend payment. If the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application for Payment.

13.5 Stored Materials and Equipment:

If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the CITY has received the materials and equipment free and clear of all charges, security interests and encumbrances and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the CITY's interest therein, all of which will be satisfactory to the Project Manager. No payment will be made for perishable materials that could be rendered useless because of long storage periods. No progress payment will be made for living plant materials until planted. The payment may be reduced by an amount equal to transportation and handling cost if the materials are stored offsite, in a remote location, or will require special handling.

13.6 CONTRACTOR's Warranty of Title:

The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the CITY no later than the time of payment free and clear of any claims, liens, security interests and further obligations.

13.7 Withholding of Payments:

The CITY may withhold or refuse payment for any of the reasons listed below provided it gives written notice of its intent to withhold and of the basis for withholding:

13.7.1 The Work is Defective, or completed Work has been damaged requiring correction or replacement, or has been installed without approval of Shop Drawing, or by an unapproved Subcontractor.

13.7.2 The Contract Price has been reduced by Change Order.

13.7.3 The CITY has been required to correct Defective Work or complete Work in accordance with paragraph 12.9.

13.7.4 The CITY's actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.2.1.a through 14.2.1.k inclusive.

13.7.5 Claims have been made against the CITY or against the funds held by the CITY on account of the CONTRACTOR's actions or inactions in performing this Contract, or there are other items entitling the CITY to a set off.

13.7.6 Subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payments for reasons stated in subparagraphs 13.7.1 through 13.7.5.

13.7.7 The CONTRACTOR has failed to fulfill or is in violation of any of his obligations under any provision of this Contract.

13.8 Retainage:

At any time the CITY finds that satisfactory progress is not being made it may in addition to the amounts withheld under 13.7 retain a maximum amount equal to 10% of the total amount earned on all subsequent progress payments. This retainage may be released at such time as the Project Manager finds that satisfactory progress is being made. Interest will be paid on retainage at the annual rate of 3.5% unless a higher rate is required by law.

13.9 Request for Release of Funds:

If the CONTRACTOR believes the basis for withholding is invalid or no longer exists, immediate written notice of the facts and Contract provisions on which the CONTRACTOR relies, shall be given to the CITY, together with a request for release of funds and adequate documentary evidence proving that the problem has been cured. In the case of withholding which has occurred at the request of the Department of Labor, the CONTRACTOR shall provide a letter from the Department of Labor stating that withholding is no longer requested. Following such a submittal by the CONTRACTOR, the CITY shall have a reasonable time to investigate and verify the facts and seek additional assurances before determining whether release of withheld payments is justified.

13.10 Substantial Completion:

When the CONTRACTOR considers the Work ready for its intended use the CONTRACTOR shall notify

the Project Manager in writing that the Work or a designated portion thereof is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the CITY issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Project Manager, the CONTRACTOR and appropriate Consultant(s) shall make an inspection of the Work to determine the status of completion. If the Project Manager does not consider the Work substantially complete, the Project Manager will notify the CONTRACTOR in writing giving the reasons therefor. If the Project Manager considers the Work substantially complete, the Project Manager will within fourteen days execute and deliver to the CONTRACTOR a certificate of Substantial Completion with tentative list of items to be completed or corrected. At the time of delivery of the certificate of Substantial Completion the Project Manager will deliver to the CONTRACTOR a written division of responsibilities pending Final Completion with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties which shall be consistent with the terms of the Contract Documents.

The CITY shall be responsible for all CITY costs resulting from the initial inspection and the first re-inspection, the CONTRACTOR shall pay all costs incurred by the CITY resulting from re-inspections, thereafter.

13.11 Access Following Substantial Completion:

The CITY shall have the right to exclude the CONTRACTOR from the Work after the date of Substantial Completion, but the CITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

13.12 Final Inspection:

Upon written notice from the CONTRACTOR that the entire Work or an agreed portion thereof is complete, the Project Manager will make a final inspection with the CONTRACTOR and appropriate Consultants and will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. The CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies. The CONTRACTOR shall pay for all costs incurred by the CITY resulting from re-inspections.

13.13 Final Application for Payment:

After the CONTRACTOR has completed all such corrections to the satisfaction of the Project Manager and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of payment to all laborers, Subcontractors and Suppliers, certificates of inspection, marked-up record documents and other documents - all as required by the Contract Documents, and after the Project Manager has indicated that the Work is acceptable (subject to the provisions of paragraph 13.17), the CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all certificates, warranties, guaranties, releases, affidavits, and other documentation required by the Contract Documents.

13.14 Final Payment and Final Completion:

13.14.1 If on the basis of the Project Manager's observation of the Work during construction and final inspection, and the Project Manager's review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, the Project Manager is satisfied that the Work has been completed and the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, the CITY will process final Application for Payment. Otherwise, the Project Manager will return the Application for Payment to the CONTRACTOR, indicating in writing the reasons for refusing to process final payment, in which case the CONTRACTOR shall make the necessary corrections and resubmit the final Application for Payment.

13.14.2 If, through no fault of the CONTRACTOR, Final Completion of the Work is significantly delayed, the Project Manager shall, upon receipt of the CONTRACTOR's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the CITY for Work not fully completed or corrected is less than the retainage provided for in paragraph 13.8, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the CITY with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

13.14.3 In addition to other requirements, final payment shall not be due until CITY's receipt of verification from the State of Alaska Department of Labor and Workforce Development ("the Department") that (i) Contractor has complied with AS 36.05.045(a) and (ii) the Department is not conducting an investigation and (iii) the Department has not issued a notice of violation of AS 36.05 to Contractor or to any subcontractor.

13.15 Final Acceptance:

Following receipt of the CONTRACTOR's Release with no exceptions, and certification that laborers, Subcontractors and materialmen have been paid, certification of payment of payroll, sales taxes and revenue taxes, and final payment to the CONTRACTOR, the CITY will issue a letter of Final Acceptance, releasing the CONTRACTOR from further obligations under the Contract, except as provided in paragraph 13.16.

13.16 CONTRACTOR's Continuing Obligation:

The CONTRACTOR's obligation to perform and complete the Work and pay all laborers, Subcontractors, and materialmen in accordance with the Contract Documents shall be absolute. Neither any progress or final payment by the CITY, nor the issuance of a certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by the CITY of Using Agency, nor any act of acceptance by the CITY nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor any correction of Defective Work by the CITY will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

13.17 Waiver of Claims by CONTRACTOR:

The making and acceptance of final payment will constitute a waiver of all claims by the CONTRACTOR against the CITY other than those previously made in writing and still unsettled.

13.18 No Waiver of Legal Rights:

The CITY shall not be precluded or be stopped by any payment, measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefor, from showing the true amount and

character of the Work performed and materials furnished by the CONTRACTOR, nor from showing that any payment, measurement, estimate or certificate is untrue or is incorrectly made, or that the Work or materials are Defective. The CITY shall not be precluded or stopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the CONTRACTOR or his Sureties, or both, such damages as it may sustain by reason of his failure to comply with requirements of the Contract Documents. Neither the acceptance by the CITY, or any representative of the CITY, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of the Contract Time, nor any possession taken by the CITY, shall operate as a waiver of any portion of the Contract or of the power herein reserved, or of any right to damages. A waiver by the CITY of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

13.19 Deductions:

The City may deduct from the amount of any payment made to the CONTRACTOR any sums owed to the City by the CONTRACTOR including but not limited to: Past due sales tax, port and harbor fees, property tax or rent. Before making any such deductions, the City shall have provided CONTRACTOR written notice of the amount claimed by the City to be due and owing from the CONTRACTOR.

ARTICLE 14 - SUSPENSION OF WORK, DEFAULT AND TERMINATION

14.1 CITY May Suspend Work:

14.1.1 The CITY may, at any time suspend the Work or any portion thereof by notice in writing to the CONTRACTOR. If the Work is suspended without cause the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if the CONTRACTOR makes an approved claim therefor as provided in Article 15. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that suspension is due to the fault or negligence of the CONTRACTOR, or that suspension is necessary for Contract compliance, or that performance would have been so suspended, delayed, or interrupted by

any other cause, including the fault or negligence of the CONTRACTOR.

14.1.2 In case of suspension of Work, the CONTRACTOR shall be responsible for preventing damage to or loss of any of the Work already performed and of all materials whether stored on or off the site or approved remote storage sites.

14.2 Default of Contract:

14.2.1 If the CONTRACTOR:

- a. Fails to begin the Work under the Contract within the time specified in the "Proposal", or
- b. Fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workmen or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 6.6 as revised from time to time), or
- c. Performs the Work unsuitably or neglects or refuses to remove materials or to correct Defective Work.
- d. Discontinues the prosecution of the Work, or
- e. Fails to resume Work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency except as prohibited by 11 U.S.C. 363e, or
- g. Allows any final judgment to stand against them unsatisfied for period of 60 days, or
- h. Makes an assignment for the benefit of creditors without the consent of the City Manager, or
- i. Disregards Regulatory Requirements of any public body having jurisdiction, or
- j. Otherwise violates in any substantial way any provisions of the Contract Documents, or
- k. For any cause whatsoever, fails to carry on the Work in an acceptable manner,

the City Manager may give notice in writing to the CONTRACTOR and his Surety of such delay, neglect, or default.

14.2.2 If the CONTRACTOR or Surety, within the time specified in the above Notice of Default, shall not proceed in accordance therewith, then the CITY may, upon written notification from the City Manager of the fact of such delay, neglect or default and the CONTRACTOR's failure to comply with such notice, have full power and authority without violating the Contract, to take the prosecution of the Work out of the hands of the CONTRACTOR. The CITY may terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the site and take possession of the Work and of all the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by the CONTRACTOR (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the CITY has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the CITY may deem expedient. The CITY may enter into an agreement for the completion of said Contract according to the terms and provisions thereof, or use such other methods that in the opinion of the City Manager are required for the completion of said Contract in an acceptable manner.

14.2.3 The City Manager may, by written notice to the CONTRACTOR and his Surety or his representative, transfer the employment of the Work from the CONTRACTOR to the Surety, or if the CONTRACTOR abandons the Work undertaken under the Contract, the City Manager may, at his option with written notice to the Surety and without any written notice to the CONTRACTOR, transfer the employment for said Work directly to the Surety. The Surety shall submit its plan for completion of the Work, including any contracts or agreements with third parties for such completion, to the CITY for approval prior to beginning completion of the Work. Approval of such contracts shall be in accordance with all applicable requirements and procedures for approval of subcontracts as stated in the Contract Documents.

14.2.4 Upon receipt of the notice terminating the services of the CONTRACTOR, the Surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the Work included under the Contract and employ by contract or

otherwise any person or persons to finish the Work and provide the materials therefor, without termination of the continuing full force and effect of this Contract. In case of such transfer of employment to the Surety, the Surety shall be paid in its own name on estimates covering Work subsequently performed under the terms of the Contract and according to the terms thereof without any right of the CONTRACTOR to make any claim for the same or any part thereof.

14.2.5 If the Contract is terminated for default, the CONTRACTOR and the Surety shall be jointly and severally liable for damages for delay as provided by Article 11.8, and for the excess cost of completion, and all costs and expenses incurred by the CITY in completing the Work or arranging for completion of the Work, including but not limited to costs of assessing the Work to be done, costs associated with advertising, soliciting or negotiating for bids or proposals for completion, and other procurement costs. Following termination the CONTRACTOR shall not be entitled to receive any further balance of the amount to be paid under the contract until the work is fully finished and accepted, at which time if the unpaid balance exceeds the amount due the CITY and any amounts due to persons for whose benefit the CITY has withheld funds, such excess shall be paid by the CITY to the CONTRACTOR. If the damages, costs, and expenses due the CITY exceed the unpaid balance, the CONTRACTOR and his Surety shall pay the difference.

14.2.6 If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that termination was wrongful, the rights and obligations of the parties shall be determined in accordance with the clause providing for convenience termination.

14.3 Rights or Remedies:

Where the CONTRACTOR's services have been so terminated by the CITY, the termination will not affect any rights or remedies of the CITY against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due the CONTRACTOR by the CITY will not release the CONTRACTOR from liability.

14.4 Convenience Termination:

14.4.1 The performance of the Work may be terminated by the CITY in accordance with this section in whole or in part, whenever, for any reason the City Manager shall determine that such termination is in the best interest of the CITY. Any such termination shall be effected by delivery to the CONTRACTOR of a Notice of Termination, specifying termination is for the convenience of the CITY the extent to which performance of Work is terminated, and the date upon which such termination becomes effective.

Immediately upon receipt of a Notice of Termination and except as otherwise directed by the City Manager the CONTRACTOR shall:

- a. Stop Work on the date and to the extent specified in the Notice of Termination;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work as is not terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- d. With the written approval of the City Manager, to the extent he may require, 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;
- e. Submit to the City Manager 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 City Manager;
- f. Transfer to the City Manager the completed or partially completed record drawings, Shop Drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the CITY;
- g. Take such action as may be necessary, or as the City Manager 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.

14.4.2 When the CITY orders termination of the Work effective on a certain date, all Work in place as of that date will be paid for in accordance with the Basis of Payment clause of the Contract. Materials required for completion and on hand but not incorporated in the Work will be paid for at cost plus 15% with materials becoming the property of the CITY - or the CONTRACTOR may retain title to the materials and be paid an agreed upon lump sum. Materials on order shall be canceled, and the CITY shall pay reasonable factory cancellation charges with the option of taking delivery of the materials in lieu of payment of cancellation charges. The CONTRACTOR shall be paid 10% of the cost, freight not included, of materials canceled, and direct expenses only for CONTRACTOR chartered freight transport which cannot be canceled without charges, to the extent that the CONTRACTOR can establish them. The extra costs due to cancellation of Bonds and insurance and that part of job start-up and phase-out costs not amortized by the amount of Work accomplished shall be paid by the CITY. Charges for loss of profit or consequential damages shall not be recoverable except as provided above.

14.4.3 The termination claim shall be submitted promptly, but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the City Manager upon request of the CONTRACTOR made in writing within the 90 day period. Upon failure of the CONTRACTOR to submit his termination claim within the time allowed, the City Manager may determine, on the basis of information available to them, the amount, if any, due to the CONTRACTOR by reason of the termination and shall thereupon pay to the CONTRACTOR so determined.

14.4.4 The CONTRACTOR and the City Manager may agree upon whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of the Work pursuant to this section. The Contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount.

In the event of the failure of the CONTRACTOR and the City Manager to agree in whole or in part, as provided heretofore, as to the amounts with respect to costs to be paid to the CONTRACTOR in connection with the termination of the Work the City Manager shall determine, on the basis of information available to them,

the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amount determined as follows:

a. All costs and expenses reimbursable in accordance with the Contract not previously paid to the CONTRACTOR for the performance of the Work prior to the effective date of the Notice of Termination;

b. So far as not included under "a" above, the cost of settling and paying claims arising out of the termination of the Work under subcontracts or orders which are properly chargeable to the terminated portions of the Contract;

c. The reasonable costs of settlement with respect to the terminated portion of the Contract heretofore, to the extent that these costs have not been covered under the payment provisions of the Contract.

14.4.5 The CONTRACTOR shall have the right of appeal under the CITY's claim procedures, as defined in Article 15, for any determination made by the City Manager, except if the CONTRACTOR has failed to submit his claim within the time provided and has failed to request extension of such time, CONTRACTOR shall have no such right of appeal.

In arriving at the amount due the CONTRACTOR under this section, there shall be deducted:

1. All previous payments made to the CONTRACTOR for the performance of Work under the Contract prior to termination;

2. Any claim which the CITY may have against the CONTRACTOR;

3. The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the CONTRACTOR or sold pursuant to the provisions of this section and not otherwise recovered by or credited to the CITY; and,

4. All progress payments made to the CONTRACTOR under the provisions of this section.

14.4.6 Where the Work has been terminated by the CITY said termination shall not affect or terminate any of the rights of the CITY against the CONTRACTOR or his Surety then existing or which may thereafter accrue because of such default. Any retention or payment of

monies by the CITY due to the CONTRACTOR under the terms of the Contract shall not release the CONTRACTOR or his Surety from liability.

Unless otherwise provided for in the Contract Documents, or by applicable statute, the CONTRACTOR, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the CITY at all reasonable times at the office of the CONTRACTOR, all its books, records, documents, and other evidence bearing on the cost and expenses of the CONTRACTOR under his Contract and relating to the Work terminated hereunder.

ARTICLE 15 - CLAIMS AND DISPUTES

15.1 Notification:

In addition to the notice requirements set out elsewhere in this Contract, if the CONTRACTOR becomes aware of any act or occurrence which may form the basis of a claim by the CONTRACTOR for additional compensation or an extension of time for performance, or if any dispute arises regarding a question of fact or interpretation of the contract, the CONTRACTOR shall immediately inform the Project Manager. If the matter cannot be resolved by agreement within 7 days, the CONTRACTOR shall, within the next 14 days, submit an Intent to Claim in writing to the Project Manager. The Claim, if not resolved, shall be presented to the Project Manager, in writing, within 60 days following receipt of the Intent to Claim. Receipt of the Claim will be acknowledged in writing by the Project Manager. The CONTRACTOR agrees that unless these written notices are provided, the CONTRACTOR will have no entitlement to additional time or compensation for such act, event or condition. The CONTRACTOR shall in any case continue diligent performance of the Contract.

15.2 Presenting Claim:

The Claim shall specifically include the following:

15.2.1 The act, event or condition giving rise to the claim.

15.2.2 The Contract provisions which apply to the claim and under which relief is provided.

15.2.3 The item or items of Contract Work affected and how they are affected.

15.2.4 The specific relief requested, including contract time if applicable, and the basis upon which it was calculated.

15.3 Claim Validity, Additional Information, and Project Manager's Actions:

The Claim, in order to be valid, must not only show that the CONTRACTOR suffered damages or delay but that those conditions were actually a result of the act, event or condition complained of and that the Contract provides entitlement to relief to the CONTRACTOR for such act, event, or condition. The Project Manager reserves the right to make written request to the CONTRACTOR at any time for additional information which the CONTRACTOR may possess relative to the Claim. The CONTRACTOR agrees to provide the Project Manager such additional information within 30 days of receipt of such a request. Failure to furnish such additional information may be regarded as a waiver of the Claim. The Claim, if not resolved by agreement within 60 days of its receipt, will automatically be forwarded to the City Manager for formal written decision.

15.4 City Manager's Decision:

The CONTRACTOR will be furnished the City Manager's Decision within 90 days, unless additional information is requested by the City Manager. The City Manager's Decision is final and conclusive unless the CONTRACTOR commences action through the court within thirty (30) days from receipt thereof.

**CITY OF DILLINGHAM
DILLINGHAM STREETS REHABILITATION**

SUPPLEMENTAL CONDITIONS

SUPPLEMENTARY CONDITIONS

REFERENCE:

1. "GENERAL CONDITIONS OF THE CONTRACT", constitutes the General Conditions of this Contract and is further revised and supplemented by the provisions of these Supplementary Conditions to the Contract, hereinafter called the "Supplementary Conditions." The General Conditions and the Supplementary Conditions are applicable to all of the Work under this Contract and shall apply to the Contractor and all Subcontractors.

SUPPLEMENTS: 2. The following supplements modify, change, delete, or add to the General Conditions. Where any article of the General Conditions is modified or any paragraph deleted, subparagraph or clause thereof is modified, or deleted by these supplements, the unaltered provisions of such article, paragraph, subparagraph or clause shall remain in effect.

SC-1 ARTICLE 1 – DEFINITIONS, Add the following:

1.1 Standard Specifications

1.1.1 Except as set forth in the attached special provisions, the **ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (ADOTPF) STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION (SSH)**, 2017 Edition, are hereby incorporated and become a part of these Contract Documents. Standard Modifications and Special Provisions to the ADOTPF Standard Specifications for Highway Construction are made in the Supplementary Conditions.

OWNER - The OWNER and CONTRACTING OFFICER are further defined as:

The City of Dillingham
P.O. Box 889
Dillingham, Alaska 99576
Tel. (907) 842-5211
Attn: Cynthia Rogers, City Planner

PROJECT MANAGER – The PROJECT MANAGER is further defined as:

The City of Dillingham
P.O. Box 889
Dillingham, Alaska 99576
Tel. (907) 842-5211
Attn: Tod Larson, City Manager

SC-2 ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.2 Copies of Contract Documents:

Change the paragraph to read: “The CITY shall furnish the CONTRACTOR up to six (6) copies of the Contract Documents. Additional copies will be furnished, upon request, at the cost of reproduction.”

3.5.2 Discrepancy – Order of Precedence:

Replace section with the following:
When conflicts, errors, or discrepancies within the Contract Documents exist, the order of precedence from most governing to least governing will be as follows:

All project permit requirements

SUPPLEMENTARY CONDITIONS

Supplemental Conditions
Special Provisions
General Conditions
Design Drawings
Standard Specifications
Standard Drawings

SC-3 ARTICLE 4 - LANDS AND PHYSICAL CONDITIONS

Add the following section:

4.8 HAZARDOUS MATERIALS

- A. OWNER shall be responsible for any Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of WORK and which may present a substantial danger to persons or property exposed thereto in connection with the WORK at the site. OWNER will not be responsible for any such material brought to the site by the CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.
- B. CONTRACTOR shall immediately stop all WORK in connection with such hazardous condition and any area affected thereby (except in an emergency as required in the General Conditions) and notify OWNER and ENGINEER (and thereafter confirm such notice in writing.) OWNER will promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume WORK in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto, and delivered to CONTRACTOR special written notice. Such written notice will specify that such condition and any affected area is or has been rendered safe for resumption of the WORK or specify any special conditions under which such WORK may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of adjustment, if any, in Contract Price or Contract Times as a result of such WORK stoppage or such special conditions under which WORK is agreed by CONTRACTOR to be resumed, either party may make a claim therefore and provided in Articles 10 and 11."

SC-4 ARTICLE 5 – BONDS, INSURANCE, AND INDEMNIFICATION

Item 5.4 *Insurance Requirements*, 5.4.1, add the following sentence:

"PND Engineers Inc. will act as the City's agents and shall be specifically named as additional insured under the insurance coverage so specified and where allowed."

SC-5 ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

Section 6.16, delete subsection and replace with the following:

Section 6.16 As-built Drawings:

The Contractor shall maintain in a safe place at the project site one record copy of all Drawings, Specifications, Addenda, Field Memos, Work Orders, Change Orders, Supplemental Agreements and written interpretations and clarifications (issued pursuant to paragraph 3.6) in good condition. These record documents shall be annotated to show all changes made during construction and will include as-built Drawings. These documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the Contracting Officer for reference and copying. Upon completion of the Work, the annotated record documents, samples and Shop Drawings shall be delivered to the

SUPPLEMENTARY CONDITIONS

Contracting Officer. Record documents shall accurately record variations in the Work which vary from requirements shown or indicated in the Contract Documents.

All costs associated with producing and maintaining the record documents shall be included with the general cost of the Work.

Section 6.17, add the following:

6.17.5 The Contractor shall do whatever work is necessary for overall project safety and be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during the Contract period. This requirement shall apply continuously and is not limited to normal working hours.

Safety provisions shall conform to regulations issued by Federal and State Departments of Labor occupational safety and health, including but not limited to federal or state OSHA regulations, and other applicable federal, state, and local laws, ordinances, codes, or requirements set forth herein, and regulations that may be specified in other parts of these Contract Documents. Where these are in conflict, the more stringent requirements shall apply. Contractor shall become thoroughly familiar with governing safety provisions and shall comply with the obligations set forth therein.

The Contractor shall develop and maintain for the duration of the Contract, a safety program that will effectively incorporate and implement required safety provisions. Contractor shall appoint a qualified employee who is authorized to supervise and enforce compliance with the safety program.

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

As part of its safety program, Contractor shall maintain at its office or other well-known location at the job site, safety equipment applicable to the Work as prescribed by governing safety authorities, and articles necessary for giving first aid to the injured. Establish procedures for the immediate removal to a hospital or a doctor's care of persons who may be injured on the job site.

Contractor shall do all work necessary to protect the general public from hazards, including but not limited to, surface irregularities, trenches, excavations, and blasting. Barricades, lanterns, and proper signs shall be furnished in sufficient amount to safeguard the public and the work. Construct and maintain satisfactory and substantial fencing, railings, barricades, or steel plates, as applicable, at all openings, obstructions, or other hazards. Such barricades shall have adequate warning lights as necessary or required for safety.

SC-6 ARTICLE 7 – LAWS AND REGULATIONS

Section 7.2, add the following:

7.2.5 "All expenses required to comply with permits shall be the sole responsibility of the CONTRACTOR. Shutdowns and delays required for compliance with any permit shall not constitute a basis for claims for additional time or additional compensation."

SC-8 ARTICLE 11 - CONTRACT TIME; COMPUTATION AND CHANGE

11.2 Starting the Work; Change the second sentence to read as follows:

"CONTRACTOR shall notify the Contracting Officer at least fourteen (14) days in advance of the time actual construction operations will begin."

11.5 Extension Due to Delays; Add the following sentences:

SUPPLEMENTARY CONDITIONS

“Normal weather in Dillingham shall not be cause for time extension and the CONTRACTOR shall allow ample time in his schedule to accommodate normal weather delays.

Shutdown or delays required by permit conditions shall not be cause for time extension.”

SC-9 ARTICLE 13 – PAYMENTS TO CONTRACTOR AND COMPLETION

13.4, Review of Applications for Progress Payments:

The Contracting Officer will, either indicate in writing a recommendation of payment, or return the Application of Payment to the CONTRACTOR indicating in writing the Contracting Officer’s reasons for refusing to recommend payment. If the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application for Payment.

13.8 Retainage:

Delete the existing paragraph and replace with the following:

“The CITY may retain a maximum amount equal to 10% of the total amount earned on all progress payments. Once 50 percent of the work is complete and if the character and progress of the work have been satisfactory to the CITY, the CITY may determine that, as long as the character and progress of the work remain satisfactory, there will be no additional retainage on account of work completed; in which case, the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the work completed.”

ADOTPF SUPPLEMENTS: The following Standard Modifications and Special Provisions modify, change, delete, or add to the ADOTPF Standard Specifications for Highway Construction, 2015 Edition, Where any article of the Standard Specifications is modified or any paragraph deleted, subparagraph or clause thereof is modified, or deleted by these supplements, the unaltered provisions of such article, paragraph, subparagraph or clause shall remain in effect. Where there are conflicts between the General Conditions and the ADOTPF Standard Specifications, the General Conditions shall apply. Where there is redundancy or overlap between the General Conditions and the ADOTPF Standard Specifications, the more stringent requirement shall apply.

DIVISION 100, GENERAL PROVISIONS, *Delete the following sections:*

Section 101 – Delete the following definitions: Addenda, Advertisement, Bid Bond, Bidder, Calendar Day, Change Order, Contract, Contracting Officer, Contractor, Directive, Holidays, Invitation for Bids or Invitation to Bid, Notice of Intent to Award, Notice to Proceed, Payment Bond, Performance Bond, Project, Specification, Subcontractor, Substantial Completion, Supplemental Agreement, Surety, Work

Section 102 – BIDDING REQUIREMENTS AND CONDITIONS

Section 103 – AWARD AND EXECUTION OF CONTRACT

Section 104 – SCOPE OF WORK, Items 1.01, 1.02, 1.03

Section 105 – CONTROL OF WORK, Items 1.01, 1.02, 1.04, 1.06, 1.07, 1.08, 1.09, 1.10, 1.11, 1.15, 1.16, 1.17

Section 107 – LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC, Items 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, 1.07, 1.08, 1.12, 1.13

Section 108 – PROSECUTION AND PROGRESS, Items 1.01(1), 1.02, 1.05, 1.06, 1.07, 1.08, 1.09

Section 109 – MEASUREMENT AND PAYMENT, Items 1.03, 1.04, 1.05, 1.06, 1.07, 1.08

END OF SUPPLEMENTAL CONDITIONS