



# GENERAL CONDITIONS FOR PUBLIC IMPROVEMENTS

REVISED 12/30/2016

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## **SECTION 1. DEFINITIONS AND TERMS**

Working titles having a masculine gender, such as workman, workmen, foreman, and pronouns such as he, his, and him are utilized in these specifications for the sake of brevity and are intended to refer to persons of either sex.

Wherever in these specifications or other contract documents the following terms are used, the intent and meaning shall be interpreted as follows:

### **1.1 ABBREVIATIONS:**

Wherever the following abbreviations are used in these specifications or on other contract documents, they are to be construed the same as the respective expressions and to mean the code or standard that is in effect at the date of advertising for bids:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers' Association
AWWA	American Water Works Association
AWS	American Welding Society
FHWA	Federal Highway Administration
FAA	Federal Aviation Administration
FSS	Federal Specifications and Standards
GSA	General Services Administration
ICC	Interstate Commerce Commission
IPCEA	Insulated Power Cable Engineers Association
ITE	Institute of Transportation Engineers
MUTCD	Manual of Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
RETMA	Radio Electronic Television Manufacturers Association
SAE	Society of Automotive Engineers
SSPC	Steel Structures Painting Council
UL	Underwriters Laboratory

## 1.2 DEFINITIONS:

**Addendum:** Changes to the contract proposal documents that become a part of the proposal, made by the contracting agency after the proposal has been assembled, but prior to the time of opening of proposals.

**Advertisement:** A public announcement inviting bids for work to be performed or materials to be furnished.

**Award:** The acceptance by the City of a bid proposal.

**Base Course:** The layer or layers of specified select material placed on a subbase or a subgrade to support a surface course.

**Bid Bond:** The security furnished with a bid to guarantee that the bidder will enter into the contract if the offer is accepted.

**Bidder:** An individual, partnership, firm, corporation, or an acceptable combination thereof as a joint venture, submitting a proposal.

**Bid Schedule:** The list of bid items, together with estimated quantities, appearing in the proposal form.

**Bridge:** A structure, including supports, erected over a depression or an obstruction, such as water, highway, or railway, said structure having a length measured along the center of roadway of more than 20 feet between under copings of abutments, or extreme ends of openings for multiple boxes and pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

**Bridge Length:** The greater dimension of a structure measured along the center of the roadway between backs of abutment back walls or between ends of bridge floor.

**Bridge Roadway Width:** The clear width of structure measured at right angles to the center of the roadway between the bottom of curbs; or if curbs are not used, between the inner faces of parapet or railing.

**Calendar Day:** A day shown on the calendar, beginning and ending at midnight.

**Change Order:** A written order approved by the City, and accepted by the Contractor, covering changes in the plans, specifications, or quantities within the scope of the contract and establishing the basis of payment and time adjustments for the work affected by the changes.

**City:** The City of Huron, South Dakota.

**City Commission:** Duly elected governing body of the City of Huron, South Dakota.

**City Engineer:** The official of the City holding the position of City Engineer.

**Contract:** The written agreement between the City and the Contractor setting forth the obligations of the parties for the performance of the prescribed work. Contract documents include the notice to bidders, proposal, contract forms, addenda, contract bond, specifications, general and special conditions, general and detailed plans, standard plates, contract award, notice to proceed, change orders, and amendments, all of which constitute one instrument.

**Contract Item (Pay Item):** A specific unit of work for which a price is provided in the contract.

**Contract Performance Bond:** The security executed by the Contractor and furnished to the City to guarantee performance of the work in accordance with the contract.

**Contract Time:** The number of working or calendar days allowed for completion of the contract or date work is to be completed.

**Contractor:** The individual, partnership, firm, corporation, or joint venture contracting with the contracting agency for performance of prescribed work.

**Controlling Item:** A construction bid item or task that controls the progress of a project.

**Crushed Material:** Granular material of which 30 percent of the particles retained on the No. 4 (4.75 mm) sieve shall contain one or more fractured faces, unless more stringent requirements are specified in the contract.

**Culvert:** A drainage structure, not classified as a bridge, that provides an opening under the roadway.

**Easement:** A right to control property for a designated purpose.

**Engineer:** The City Engineer, acting directly or through an assistant or other representative duly authorized by the City Engineer, such assistant or representative acting within the scope of the particular assigned duties, or of the authority given.

**Equipment:** Machinery, tools, implements, or apparatus, together with supplies for maintenance and upkeep, necessary for the construction and completion of the work.

**Erosion Control:** Those items necessary to the completed project that provide for the preservation of landscape materials and features. The rehabilitation and protection against erosion of areas disturbed by construction through seeding, sodding, mulching, and the placing of other ground covers. Such suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the project.

**Estimate of Quantities:** Plan shown summary of the estimated quantities of work necessary to complete the planned improvement.

**Extra Work:** An item of work not provided for in the contract as awarded but found by the Engineer essential to the satisfactory completion of the contract within its intended scope.

**Extra Work Authorization:** An agreement between the City and the Contractor to perform extra work at agreed prices or on a force account basis.

**Holidays:** January 1, (New Year's Day); the third Monday in January, (Martin Luther King Day); the third Monday in February, (Presidents' Day); the last Monday in May, (Memorial Day); July 4, (Independence Day); the first Monday in September, (Labor Day); the second Monday in October, (Native American Day); December 11, (Veterans' Day); the fourth Thursday in December, (Thanksgiving Day); and December 25, (Christmas Day).

When an official holiday falls on Sunday, the following Monday is a holiday. When an official holiday falls on Saturday, the preceding Friday is a holiday.

**Inspector:** The Engineer's authorized representative assigned to make detailed inspections of contract performance.

**Interest Rate:** The City shall pay to the Contractor interest as set by the governing body at a rate of not less than the Category E rate of interest as established by §54-3-16 on the amounts retained and on the final payment due the Contractor beginning 30 days after the work under the contract has been completed, as evidenced either by the completion date established by the Architect's or Engineer's letter of acceptance, or by the use and occupancy of the public improvement. The interest shall continue until the date when payment is tendered to the Contractor unless delay in payment has been the result of federal participation in such contract in which event interest may not begin until 30 days after payment by the federal authority involved.

If a portion of a progress payment is retained, other than the final payment, the public corporation shall pay to the Contractor interest as set by the governing body at a rate of not less than the Category E rate of interest as established by §54-3-16 on the amount retained, beginning 30 days after the Contractor has furnished the public corporation with all required records and reports, and a progress inspection has been made.

**Laboratory:** An independent testing laboratory, which may be designated by the Engineer.

**Materials:** Substances specified for use in the construction of the project and its appurtenances.

**Metric Ton:** 1,000 kilograms.

**Notice to Bidders:** The advertisement for proposals for work or materials on which bids are required. Such advertisement will indicate, with reasonable accuracy, the quantity and location of the work to be done, or the character and approximate quantity of the material to be furnished, and the time and place of the opening of proposals.

**Notice to Proceed:** Written notice to the Contractor to begin with the contract work.

**Pavement Structure:** The combination of subbase, base course, and surface course placed on a subgrade to support and distribute the traffic load to the roadbed.

**Performance Bond:** See contract performance bond.

**Plans:** The contract drawings that show the location, character, and dimensions of the prescribed work, including layouts, profiles, cross sections, and contract documents.

**Profile Grade:** Unless otherwise shown on the plans, the trace of a vertical plane intersecting the top surface of the proposed subgrade surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

**Project:** The specific work, together with all appurtenances and construction, to be performed under the contract.

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

**Proposal Form:** The prescribed form on which the offer of a bidder is to be submitted.



**Right-of-Way:** Land, property, or interest therein acquired for or devoted to a public use.

**Road:** A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

**Roadbed:** The graded portion of a street within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

**Roadside:** A general term denoting the area adjoining the outer edge of the street. Extensive areas between the roadways of a divided street may also be considered roadside.

**Roadway:** The portion of a street within limits of construction.

**Shoulder:** The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

**Sidewalk:** That portion of the roadway primarily constructed for the use of pedestrians.

**Special Conditions:** Additions and revisions to the General Conditions applicable to an individual project.

**Specifications:** A general term applied to all directions, conditions, and requirements pertaining to performance of the work.

**Standard Specifications:** A book of specifications approved for general applications and repetitive use.

**State:** The state of South Dakota acting through its authorized representative.

**State Taxes:** Taxes imposed by the state such as sales/use tax on materials and excise tax on construction costs.

**Street:** A public way for purposes of vehicular travel, including the entire area within the right-of-way.

**Structures:** Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, end walls, buildings, sewers, service pipes, under drains, foundation drains, and other features that may be encountered in the work and not otherwise classified herein.

**Subbase:** The layer or layers of specified or selected material of designated thickness placed on a subgrade to support a base course or a surface course.

**Subcontractor:** An individual, partnership, firm, corporation, or an acceptable combination thereof as a joint venture to which the Contractor sublets part of the contract.

**Subgrade:** The top surface of a roadbed upon which the pavement structure and shoulders, including curbs, are constructed.

**Substructure:** That part of a structure below the bearings of simple and continuous spans, skewback of arches, and tops of footings or rigid frames; including back walls, wing walls, and wing protection railings. For reinforced concrete slab bridges—that portion below the deck slab.

**Superintendent:** The Contractor's authorized representative in responsible charge of the work.

**Superstructure:** The entire structure except the substructure.

**Supplemental Standard Specifications:** Revisions to the standard specifications.

**Surety:** The corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.

**Surface Course:** One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called the "Wearing Course."

**Titles (or Headings):** The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

**Traveled Way:** The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

**Work:** The furnishing of labor, materials, equipment, and incidentals necessary to the successful completion of the project.

**Working Drawings:** Stress sheets, shop drawings, erection plans, false work plans, framework plans, bending diagrams for reinforcing steel or supplementary plans or similar data that the Contractor is required to submit to the Engineer for review.

**Written Order:** An order, issued in writing by the Engineer, of a contractual status requiring performance by the Contractor without negotiation of any sort.

## **SECTION 2. BIDDING REQUIREMENTS AND CONDITIONS**

### **2.1 CONTENTS OF PROPOSAL FORMS:**

The proposal form will state the location and description of the contemplated construction, show the estimate of the various quantities and type of work to be performed or materials to be furnished, and will have a schedule of items for which unit bid prices are invited. The proposal form will state the time in which the work must be completed, the amount of the proposal guaranty, and the date, time, and place of the opening of proposals. The form will also include any special conditions, supplemental specifications, or requirements that vary from or are not contained in the standard specifications.

Papers bound or attached to the proposal form by the City are considered a part thereof and must not be detached or altered when the proposal is submitted, except the bidder may attach a substitute bid schedule as provided in Section 2.4. Plans, specifications, and other documents designated in the proposal form will be considered a part of the proposal whether attached or not.

### **2.2 INTERPRETATION OF QUANTITIES IN BID PROPOSAL:**

The quantities appearing in the bid proposal are estimates and are prepared for the comparison of bids. Payment to the Contractor will be made for the actual quantities of work performed or materials furnished in accordance with the contract. The estimated quantities of work to be done and materials to be furnished may each be increased, decreased, or deleted as hereinafter provided.

### **2.3 EXAMINATION OF PLANS, SPECIFICATIONS, CONDITIONS, AND SITE OF WORK:**

The bidder shall examine the project site and contract documents for the work contemplated. Submission of a proposal will be considered conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, the character, quality and quantities of work to be performed, and materials to be furnished, according to all contract documents.

The City will not be bound by any statement or representation concerning conditions made by any of its employees or agents prior to the execution of the contract, unless included in the contract documents.

Boring logs and other records of subsurface investigations may be available for inspection by bidders. It is understood that such information was obtained and is intended for design and estimating purposes. Its accuracy is not guaranteed. It is made available to bidders so they may have access to identical subsurface information available to the City. It is not intended as a substitute for personal investigation, interpretations, or judgment of the bidders.

Any explanation desired by a bidder regarding the meaning or interpretation of the bidding documents must be requested in adequate time to allow a reply to reach all bidders before submission of their bid proposal. Any interpretation made will be in the form of an addendum to the proposal form and will be furnished to all prospective bidders by email before the time set for opening of proposals. Oral explanations or instructions given before the award of the contract will not be binding.

The Contractor shall immediately notify the City of any apparent error, omission, or ambiguity in any part of the bid package. The City will determine if there is an error, omission, or ambiguity and issue an addendum to all prospective bidders, as appropriate.

## 2.4 PREPARATION OF PROPOSAL:

The bidder shall submit the proposal on the forms furnished by the City. The bidder shall specify a unit price for each pay item for which a quantity is given and show the products of the respective unit prices and quantities written in figures in the column provided for that purpose and the total amount of the proposal obtained by adding the amounts of the several items. Figures shall be in ink or typed.

When an item in the proposal contains a choice to be made by the bidder, the bidder shall indicate the choice in accordance with the specifications for that particular item, and no further choice will be permitted.

The bidder's proposal must be signed with ink by the individual, by one or more members of the partnership, by one or more members or officers of each firm representing a joint venture, by one or more officers of a corporation, or by an agent of the Contractor legally qualified to do so. If the proposal is made by an individual, the individual's name and post office address must be shown; by a partnership, the name and post office address of each partnership member must be shown; as a joint venture, the name and post office address of each member or officer of the firms represented by the joint venture must be shown; by a corporation, the name of the corporation and the business address of its corporate officials must be shown.

The bidder may attach a substitute proposal form printed by a computer in lieu of completing the bound proposal form. If a substitute proposal form is used, it shall be attached to the bound proposal form. Such form shall include the following at the top of each page:

- A. Project Title.
- B. CIP Number.
- C. Bid Request Number.
- D. Letting Date.
- E. Bidder's Name.

The substitute computer printed proposal form shall have column headings that include the Item Number, Item Description, Unit, Approximate Quantity, Unit Bid Price, Amount Bid for each item, Total Gross Sum Bid below the last bid item and bidder's name, signature in ink, and title at the end of the proposal form. The signature on the substitute computer printed proposal form shall be the same as that on the bound proposal. The total gross sum bid shall also be written in ink in the space provided in the bound proposal. In case of a discrepancy between the item number, item description, and/or quantity shown in the bound proposal and those shown in the substitute computer printed proposal form, the bid item description and/or quantity shown in the bound proposal shall govern. The unit bid price shown on the substitute computer printed proposal form shall govern whether or not the amount bid shown is correct. The substitute proposal form page size and size of printed characters shall be approximately the same as the bound proposal form. Solid lines for separating columns and line numbers need not be printed. Columns may be arranged either vertically or horizontally on the substitute proposal form. Pages must be numbered by page number of the total pages (page 1 of 4). Item number should follow the item number on the proposal form. Abnormalities not waived by the City as a technicality will result in rejection of the bid.

## **2.5 IRREGULAR PROPOSALS:**

Proposals will be considered irregular and may be rejected for the following reasons:

- A. The proposal is on a form other than that furnished by the City, or if the form is altered or part thereof is detached or incomplete, unless it meets the requirements of Section 2.4.
- B. There are unauthorized additions, conditional or alternate bids, or irregularities, which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- C. The bidder adds conditions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award. This does not exclude a bid proposal limiting the maximum gross amount of awards acceptable to a bidder at one bid letting. Selection of awards will be made by the City.
- D. The proposal does not contain a unit price for each pay item listed except in the case of authorized alternate pay items.
- E. Unit bid prices are significantly unbalanced to the detriment of the City.

## **2.6 BID BOND:**

The proposal will not be considered unless accompanied by a guaranty of the character and in an amount not less than the amount indicated in the proposal form.

## **2.7 DELIVERY OF PROPOSALS:**

Proposals shall be placed in a sealed envelope with "BID PROPOSAL," the Bid Request Number, and the name and address of the bidder clearly printed on the front. Mailed proposals shall be addressed as follows:

Bid No.: \_\_\_\_\_ Due: \_\_\_\_\_

Finance Dept – Pullynn Carey  
City of Huron  
239 Wisconsin Ave SW  
P.O. Box 1369  
Huron, SD 57350-1369  
Bid Documents Enclosed

Proposals shall be filed prior to the time and at the place specified by the notice to bidders. Proposals received after the time for opening of bids will be returned to the bidder unopened.

## **2.8 WITHDRAWAL OR REVISION OF PROPOSALS:**

Any bid may be withdrawn by letter, facsimile, or in person before the time specified in the advertisement therefore. Bids may be modified by mail or facsimile notice received at the place designated in the invitation to bid not later than the time set for the opening of bids. Facsimile modification shall not reveal the bid price but shall provide the addition, or subtraction, or the modification, so that the final prices or terms will not be known to the public corporation until the sealed bid is opened. Any facsimile modification may not be withdrawn after the time set for the opening of bids. No bid made shall be changed or altered by telephone. No bid shall be withdrawn for a period of 30 (thirty) days after the bid opening.

## **2.9 COMBINATION PROPOSALS:**

If the City elects, proposals may be issued for projects in combination and/or separately, so that bids may be submitted either on the combination or on separate units of the combination. The City reserves the right to make awards on combination bids or separate bids to the best advantage of the City. Combination bids, other than those specifically set up in the proposals by the City, will not be considered. Separate contracts will be written for each project included in the combination.

## **2.10 PUBLIC OPENING OF PROPOSALS:**

Proposals will be opened and read publicly at the time and place indicated by the notice to bidders. Results of a particular bid will be available on the day following the opening and acceptance of that bid and a copy of the tabulations of the bids may be attained through the Engineering Department.

## **2.11 MATERIAL GUARANTY:**

The successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of materials to be used in the construction of the work, together with samples. Samples may be subjected to the tests provided for in these specifications to determine their quality and fitness for the work.

## **2.12 DISQUALIFICATION OF BIDDERS:**

The following reasons will be considered sufficient for disqualifying a bidder and rejecting the proposal or proposals:

- A. Submittal of more than one proposal for the same work from an individual, firm, or corporation under the same or different name.
- B. Evidence of collusion among bidders. Participants in collusion will not receive recognition as bidders for future work with the City until they are reinstated as a qualified bidder.

## **2.13 SALES/USE AND EXCISE TAXES:**

Use taxes on materials furnished by the City become the liability of the Contractor and are based on the price the City paid for them. Excise tax is applicable as defined under SDCL 10-46A. Contractors and subcontractors should include the applicable tax in their bid price for each item of work. Tax questions should be directed to the South Dakota Department of Revenue. Contact information for the South Dakota Department of Revenue is listed below:

South Dakota Department of Revenue                      or  
Attn: Business Tax  
445 East Capitol Avenue  
Pierre, SD 57501-3185  
Phone: 1-800-829-9188  
Email: bustax@state.sd.us

South Dakota Department of Revenue  
300 South Sycamore Avenue, Suite 102  
Sioux Falls, SD 57110  
Phone: 605-367-5800

## **SECTION 3. AWARD AND EXECUTION OF CONTRACT**

### **3.1 CONSIDERATION OF PROPOSALS:**

After the proposals are opened and read, they will be compared on the basis of the summation of the products of the quantities shown in the bid schedule by the unit bid prices. The results of such comparisons will be available to the public in the City of Huron Engineering Office upon completion of the tabulation of bids. In the event of a discrepancy between the unit bid prices and extensions, the unit bid price shall govern.

The City may reject any or all proposals, waive technicalities, or advertise for new proposals, if in the judgment of the City, the best interests of the City will be promoted thereby.

### **3.2 AWARD OF CONTRACT:**

The award of contract, if awarded, will be made within 30 calendar days after the opening of proposals to the lowest responsive and responsible bidder meeting specifications. If an ordinance requiring a supplemental appropriation or a transfer of appropriations requiring City Commission action is required to provide necessary funding for a project, not more than 60 days shall lapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder or the rejection of all the bids presented. The successful bidder will be notified, by letter (e)mailed to the address shown on the proposal that the bid has been accepted and the contract awarded. The successful bidder shall return an acknowledged copy of the notice of award to the City.

### **3.3 CANCELLATION OF AWARD:**

The City reserves the right to cancel the award of a contract before the execution of said contract without liability against the City.

### **3.4 RETURN OF BID BOND:**

The bid bond of the lowest responsive and responsible bidder will be retained. The remaining proposal guaranties will be returned upon the acceptance of the bid of the lowest responsible bidder or the rejection of all of the bids presented.

The bid bond of the lowest responsive and responsible bidder will be returned after the contract is executed.

### **3.5 REQUIREMENT OF PAYMENT AND PERFORMANCE BOND:**

At the time of the execution of the contract, the successful bidder shall furnish a surety bond or bonds in a sum equal to the amount of the contract for the faithful performance of the contract, with the additional obligation that the Contractor shall promptly pay all persons supplying him with labor or material in the prosecution of the work provided for in the contract. The form of bonds and security furnished shall be acceptable to the City. The contract bond shall remain in effect for the duration of the warranty period pursuant to Sections 5.16 and 5.17.

If the bonding company becomes insolvent or is declared bankrupt, the City will require the Contractor to furnish a new performance bond.

### **3.6 EXECUTION AND APPROVAL OF CONTRACT:**

The contract shall be signed by the successful bidder and returned, together with the performance bond, within 10 days after the City awarded the contract. If the contract is not executed by the City within 15 days following receipt from the bidder of the signed contracts and bonds, the bidder shall have the right to withdraw the bid without penalty. A contract shall not be effective until it has been executed by all parties.

### **3.7 FAILURE TO EXECUTE CONTRACT:**

Failure to execute the contract and file acceptable bonds within 10 days after the contract has been awarded may be just cause for the cancellation of the award and the forfeiture of the bid bond, which shall become the property of the City, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible bidder, or work may be readvertised.



## **SECTION 4. SCOPE OF WORK**

### **4.1 INTENT OF CONTRACT:**

The intent of the contract is to provide for the construction and completion in detail of the work described. The Contractor shall furnish labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with contract documents.

### **4.2 ALTERATIONS OF PLANS:**

The City reserves the right to make such increases or decreases in quantities and such alterations in the work within the general scope of the contract as may be found necessary. Such increases or decreases and alterations shall not invalidate the contract nor release the surety. The Contractor agrees to accept the work as altered, as if it had been a part of the original contract. No claim shall be made by the Contractor for loss of anticipated profits because of such alteration, or by reason of variation between the estimated quantities and the quantities of work completed.

Alterations of plans shall not involve or require work beyond the termination of the original proposed construction unless and until either a supplemental agreement acceptable to both parties has been executed, or a change order is issued to the effect that the work is to be performed as extra work in accordance with the provisions of Section 9.4.

Unless alterations in plans materially change the cost of performing a contract item or items, such item or items shall be performed as a part of the contract and will be paid for at the contract price or prices. When alterations in plans materially change the cost of performing a contract item or items, an allowance will be made on such basis as agreed to by change order in advance of performance of the work involved.

Payment for work occasioned by alterations in plans will be made in accordance with the provisions set forth under Section 9.3. If the altered work is of sufficient magnitude as to require additional time in which to complete the project, such time adjustment shall be made in accordance with the provisions of Section 8.8.

Prices for items that are predetermined by the City and set forth in the proposal form will not be subject to negotiation because of alterations in plans or quantity changes.

### **4.3 EXTRA WORK:**

The Contractor shall perform authorized work for which there is no price included in the contract whenever necessary to complete the work as contemplated. Such work shall be performed in accordance with the specifications as directed, and paid for as provided under Section 9.4. Change orders up to \$25,000 may be authorized by the City Engineer. A change order exceeding \$25,000 must be approved by the Mayor.

### **4.4 MAINTENANCE OF TRAFFIC:**

Unless otherwise provided, the Contractor shall keep the project secured from public use. Such measures to adequately restrict public access must be used and maintained by the Contractor. If the contract documents call for public access, the Contractor shall install and maintain appropriate controls as required.

#### **4.5 TEMPORARY USE OF EXISTING MATERIAL:**

Unless otherwise provided, existing material may be used temporarily by the Contractor in the construction of the new facilities. Modification of such material will not be permitted unless approved by the Engineer.

#### **4.6 FINAL CLEANING UP:**

Before final acceptance, the project area and areas occupied by the Contractor in connection with the work shall be cleaned of rubbish, excess materials, temporary structures, and equipment, and the work left in an acceptable condition.

## **SECTION 5. CONTROL OF WORK**

### **5.1 AUTHORITY OF THE ENGINEER:**

Work shall be performed to the satisfaction of the Engineer. The Engineer will decide questions that may arise as to the quality and acceptability of materials furnished, work performed, rate of progress of the work; all questions that may arise as to the interpretation of the contract documents; all questions as to the acceptable fulfillment of the contract on the part of the Contractor; and disputes between Contractors where it effects the progress of the work.

The Engineer will have the authority to suspend the work wholly or in part, by written suspension order, for failure to carry out conditions of the contract; for failure to carry out orders; for such periods as may be necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the work; or for other conditions or reasons determined by the City in the public interest.

### **5.2 PLANS AND WORKING DRAWINGS:**

Plans will show details as required to construct the project. The Contractor shall have one set of plans available at the work site.

Plans will be supplemented by such working drawings as are necessary to control the work. Working drawings for structures shall be furnished by the Contractor, consisting of such detailed plans as may be required to control the work. They shall include stress sheets, shop drawings, erection plans, false work plans, bending diagrams for reinforcing steel, erosion control plans, or other supplementary plans or data required of the Contractor. Working drawings must be reviewed by the Engineer. Review shall not operate to relieve the Contractor of responsibility under the contract for completion of the work.

### **5.3 CONFORMITY WITH PLANS AND SPECIFICATIONS:**

Work performed and materials furnished shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown on the plans, specifications, or other contract documents.

If the Engineer finds the materials furnished, work performed, or the finished product not within reasonable conformity with the plans and specifications but that reasonably acceptable work has been produced, he shall then determine if the work shall be accepted and remain in place. If acceptable, the Engineer will document the basis of acceptance by contract modification that will provide for an adjustment in the contract price for such work or materials as necessary to support this determination.

If the Engineer finds the materials furnished, work performed, or the finished product is not in reasonably close conformity with the plans and specifications resulting in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or corrected by and at the expense of the Contractor.

Items of work that may have an impact on public use or public safety that are accomplished contrary to specifications shall be corrected immediately and may be subject to price adjustment.

#### **5.4 COORDINATION OF CONTRACT DOCUMENTS:**

The contract documents are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over-scaled dimensions. The plans will prevail in the event of a conflict with a bid item appearing in the proposal. For other discrepancies, the items shall prevail, or govern, in the following descending order:

- A. Change orders.
- B. Addenda.
- C. Proposal.
- D. Special Provisions and Special Conditions.
- E. Plans.
- F. Standard Specifications (aka Supplemental Standard Specifications).
- G. City of Huron General Conditions for Public Improvements.
- H. South Dakota Department of Transportation Supplemental Specifications and Errata related to Division II and Division III of said document.
- I. Division II—Construction Details and Division III—Materials Details of the South Dakota Department of Transportation Standard Specifications for Roads and Bridges.

#### **5.5 COOPERATION BY CONTRACTOR:**

The Contractor will be supplied with a minimum of two sets of approved plans and contract assemblies, including special conditions; one set of which the Contractor shall have available on the project.

The Contractor shall give the work the constant attention necessary to facilitate the progress and shall cooperate with the Engineer, Inspectors, and other Contractors.

The Contractor shall not take advantage of apparent errors or omissions in the contract. If the Contractor discovers an error or omission, the Engineer shall be immediately notified. The Engineer will make corrections and interpretations as necessary to fulfill the intent of the contract.

#### **5.6 COOPERATION WITH UTILITIES:**

The Engineer has attempted to show all existing aboveground and underground facilities, including public and private utilities, that may be affected by the construction. The location, depth, and size of each facility shown on the plans are approximate and are not guaranteed. Other underground facilities may exist with their location not presently known or identified. It is the Contractor's responsibility to determine the existence and exact location of all facilities located within the construction area to avoid damage.

The Contractor shall, prior to commencing any excavation or other operation that may affect underground facilities, notify the South Dakota One Call Center, established to comply with South Dakota Codified Law (SDCL) 49-7A and Administrative Rule Article 20:25. If the Contractor is unable to locate an underground utility or discovers that the utility owner has incorrectly located the facility, the Contractor shall promptly notify the owner or South Dakota One Call.

In areas where the Contractor's operations are adjacent to facilities of companies including, but not limited to, railway, telecommunications, electric, water, sewer, and petroleum products, or are adjacent to other property that if damaged, might result in considerable expense, loss or inconvenience, work shall not commence until the Contractor has made arrangements to protect these facilities. The Contractor shall make arrangements with the respective utility to support, sustain, and protect existing pipes, conduits, poles, wires, and other apparatus located under, over, along, across, or adjacent to the work site.

If during construction an underground utility is damaged, dislocated, or disturbed, the Contractor shall notify the owner of the utility, or if unknown, South Dakota One Call. If such utilities are damaged through the Contractor's negligence, they will be repaired by the agencies having control of same, but the cost of such repairs shall be paid by the Contractor. The Contractor is prohibited from concealing, attempting to conceal, or making repairs to the utility unless authorized by the utility owner.

Where existing facilities are shown in the contract documents or encountered within the construction area, it shall be the responsibility of the Contractor to notify the operators of those facilities prior to beginning any construction activities. The Contractor shall allow access to those facilities for necessary modification of services.

Additional compensation will not be allowed for delays, inconvenience, or damage sustained due to interference from the utility appurtenances, or the operation of moving them, or additional work occasioned by the location or adjustment of aboveground or underground facilities. Additional contract time requests conforming to the requirements of Section 8.8, Extension of Time will be considered.

The Contractor shall cooperate with utility owners in removing and rearranging underground or overhead utility lines or facilities to minimize interruption of service and duplication of work by utilities owners. If utility service is interrupted, continuous cooperation will be required until the service is restored.

#### **5.7 COOPERATION BETWEEN CONTRACTORS:**

The City reserves the right to contract and perform additional work on or near the work covered by the contract.

When separate contracts are let within the limits of a project, the Contractor shall conduct work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed. The Contractor shall arrange work and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same project. Work shall be joined and performed in sequence with others.

Each Contractor involved shall assume liability, financial or otherwise, in connection with the contract, protect and save harmless the City from damages or claims that may arise because of inconvenience, delay, or loss experienced because of the presence and operations of other Contractors working within the limits of the same project.

## **5.8 CONSTRUCTION STAKES, LINES, AND GRADES:**

The Engineer will set the necessary centerline, slope, and grade stakes. The City will not be responsible for delays in setting stakes unless the Contractor gives the Engineer 5 working days' notice prior to beginning work on the project and thereafter, unless the Contractor gives the Engineer 48 hours' notice, not including Saturday, Sunday, or holidays, that stakes are needed.

The City will be responsible for the accuracy of stakes set and lines established by the Engineer.

For structures, the Engineer will set stakes for elevation and such other necessary stakes as will definitively establish the location and alignment of the structure.

The Contractor shall determine the meaning of all stakes, measurements, and marks before commencing work.

The Contractor shall be responsible for the preservation of stakes and marks. If construction stakes or marks have been carelessly or willfully destroyed or disturbed by the Contractor, the cost of replacing them will be charged to the Contractor.

### ***Structure Staking:***

**Bridges:** For bridges, the City will provide stakes to establish elevation, location, and alignment for each abutment. The Engineer will stake and reference the centerline of each abutment in the longitudinal direction and in each direction transversely.

**Box Culverts:** For box culverts, the City will provide stakes to establish elevation, location, and alignment of both ends of the box culvert. The Engineer will stake and reference the centerline of each box culvert in the longitudinal direction and in each direction transversely.

The Contractor shall provide all other stakes required to successfully complete construction of the structure, unless additional staking due to difficult site conditions is requested by the Contractor and agreed to by the Engineer. The Contractor verifies the accuracy of all location and alignment stakes that are in addition to those above.

On projects that include a bid item for Contractor staking, the Contractor shall provide all stakes for the structure.

## **5.9 AUTHORITY AND DUTIES OF ENGINEER:**

As the representative of the City, the Engineer has immediate and responsible charge of engineering details and administration of the construction project. The Engineer has the authority to reject defective material and work and to suspend work being improperly performed.

## **5.10 DUTIES OF THE INSPECTOR:**

Inspectors employed by the City are authorized to inspect work and materials furnished. Inspection may extend to any part of the work, preparation, fabrication, or manufacture of the materials to be used. The Inspector is not authorized to alter or waive the conditions of the contract. The Inspector is not authorized to issue instructions contrary to the plans and specifications, or to act in a supervisory capacity for the Contractor. The Inspector will have the authority to reject work or materials until any questions at issue can be referred to and decided by the Engineer.

Neither the City's authority to inspect all work nor any actual inspections performed by the City during the course of construction shall constitute an acceptance of work performed, or operate to relieve the Contractor of its obligation to construct the project in compliance with the plans and specifications.

#### **5.11 INSPECTION OF WORK:**

Materials and details of the work shall be subject to inspection by the Engineer. The Engineer shall be allowed access to the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the Engineer requests, the Contractor, prior to acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore the work to the standard required by the specifications. If the exposed work is acceptable, the uncovering, or removing and replacing of the covering, or making good of the parts removed, will be paid for as extra work. If the work exposed is unacceptable, the uncovering, or removing, and the replacing of the covering, or making good of the parts removed, will be at the Contractor's expense.

The Contractor shall notify the Engineer 24 hours in advance of any change in construction activity.

Work done or materials used without supervision or inspection by an authorized City representative may be ordered removed and replaced.

When a unit of government, or political subdivision, or railroad corporation is to pay a portion of the cost of the work covered by the contract, its respective representatives shall have the right to inspect the work. Such inspections shall not make the unit of government, or political subdivision, or railroad corporation a party to the contract and shall not interfere with the rights of either party hereunder.

#### **5.12 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK:**

Work which does not conform to the requirements of the contract will be considered as unacceptable, unless otherwise determined acceptable under the provisions in Section 5.3. Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or other cause, shall be removed immediately and replaced in an acceptable manner.

Work shall be done to lines and grades established by the Engineer. Work done contrary to the instructions of the Engineer, work done beyond the lines shown on the plans, or extra work done without authority will be considered as unauthorized and will not be paid for under the provisions of the contract. Work so done may be ordered removed or replaced at the Contractor's expense.

Upon failure on the part of the Contractor to comply forthwith with orders of the Engineer made under the provisions of this section, the Engineer will have authority to cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the costs from any monies due or to become due the Contractor.

### **5.13 WEIGHT LIMITATIONS:**

Depending on the project location, the Contractor shall comply with weight limitations established by South Dakota Codified Laws 32-22-16 and 32-22-21 on roads and streets outside the limits of the project. Within the project limits, the Contractor shall comply with the above referenced weight limitations and with special weight limitations imposed by the contract for the hauling of material and the movement of equipment over bridges and culverts, and the courses making up the pavement structure. Weight restrictions will not be imposed for the hauling of materials or movement of equipment on an earth subgrade, selected backfill, gravel cushion, or gravel surfacing.

Should the Contractor desire to cross bridges, box culverts, or the courses making up the pavement structure with equipment or loads that exceed the weight limitations, a written request shall be submitted to the Engineer with information relative to loaded vehicle weight, empty vehicle weight, equipment make and model, tire size, axle spacing, and axle loading of the equipment proposed for use. The information will be reviewed by the Engineer and a determination made if approval will be granted.

Nothing set forth in the foregoing shall relieve the Contractor of liability for damage resulting from the operation and movement of construction equipment.

### **5.14 MAINTENANCE DURING CONSTRUCTION:**

The Contractor shall maintain the work during construction and until the project is accepted. Maintenance shall constitute continuous and effective work, prosecuted day by day, with equipment and forces to keep the project area in satisfactory condition.

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during construction operations.

Cost of maintenance work during construction and before the project is accepted shall be included in the unit price bid on the various pay items, and the Contractor will not be paid an additional amount for such work.

### **5.15 FAILURE TO MAINTAIN PROJECT:**

If the Contractor fails to comply with the provisions of Section 4.4 or 5.14, the Engineer will notify the Contractor of such noncompliance. If the Contractor fails to remedy unsatisfactory maintenance after receipt of such notice, the Engineer may proceed to maintain the project, and the entire cost of this maintenance will be deducted from monies due or to become due the Contractor.

### **5.16 ACCEPTANCE:**

When the work is completed a final inspection will be performed by the Engineer to determine conformity with the requirements of the contract. A listing of any deficiencies or uncompleted work (punch list) will be presented to the Contractor. If there are no deficiencies or uncompleted work, written notification will be issued to the Contractor indicating the work conforms to the requirements of the contract and final acceptance is granted. If there are deficiencies or uncompleted work, these items must be corrected or completed by the Contractor prior to issuance of final acceptance.



When the work is scheduled to be carried over a winter or there are multiple phases of a project with completion dates of each phase more than three months apart, the Contractor may submit a written request for a final inspection and final acceptance on a portion of the work if the following criteria are met:

- A. The portion of the work being requested for final acceptance is complete and the facilities can be put to their intended use and no significant deficiencies exist.
- B. All testing has been completed and the required results have been met for the portion of the work being requested for final acceptance.

Final acceptance will begin the warranty period.

#### **5.17 WARRANTY:**

The Contractor shall warranty the work for any defects from the date of issuance of the final acceptance notification for a period as follows:

- A. Surfacing items including concrete paving, curb and gutter, sidewalks, asphalt, and asphalt surface treatments shall have a one-year warranty.
- B. Shrubbery and trees shall have a one-year warranty.
- C. Vegetative cover, including seeding and sod, will be inspected after the required maintenance period. If the vegetative cover is growing and healthy, there will be no warranty period. Areas lacking growth or that are unhealthy must be corrected to the satisfaction of the Engineer. Dormant seeded areas will be evaluated for growth and health in the spring.
- D. All other items shall have a two-year warranty including storm sewer, sanitary sewer, water main, traffic signal, and roadway lighting systems. Also included in this warranty period are defects caused by trench or roadway fill settlement.
- E. Warranty for City-furnished materials shall be for workmanship only unless otherwise specified. City-furnished materials shall be warranted by the product manufacturer.
- F. The Contractor shall be notified in writing of any defects in the work during the course of the warranty period. The Contractor shall submit to the Engineer an acceptable construction schedule to correct the defects at their expense within ten days of receipt of the notice. Failure to correct or undertake, with due diligence, to correct the defects within the specified time may cause the owner to make the necessary repairs and bill the Contractor up to 1 1/2 times the costs incurred. In case of an emergency, where, in the judgment of the City, delay would cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.

The City has the right to extend the warranty period for specific portions of the work if:

- A. Defects are apparent or if the work is not performing as specified and the Engineer determines it is in the best interest of the City to monitor the performance of the work beyond the original warranty period. In these circumstances, the City and Contractor may mutually agree to extend the length of the warranty period beyond the time frames identified in this section. The Engineer will provide written notification to the Contractor indicating the specific items or portions of the work the extended warranty includes, length of time the additional warranty period should remain in effect, and reason for extending the warranty length. The Contractor shall provide written documentation acknowledging the terms and conditions of the extended warranty period. The City may also require the Contractor to supply a warranty bond for the extended warranty period. The amount of the warranty bond will be in an amount equal to the costs to repair or replace the items covered by the extended warranty.
- B. Significant repairs are made to the work during the warranty period. Additional warranty will not be required for minor repairs made during the warranty period and the additional warranty will only apply to the specific portions of the work where significant repairs have been made. The Engineer will determine if a repair is significant or minor. The Engineer will provide written notification to the Contractor indicating the specific items or portions of the work the extended warranty includes, length of time the additional warranty period will remain in effect, and reason for extending the warranty length.

#### **5.18 CLAIMS FOR ADDITIONAL COMPENSATION:**

If the Contractor deems that additional compensation is warranted for work or materials not covered in the contract and not ordered as extra work as defined herein, the Contractor shall give the City Engineer written notice of the claim for additional compensation.

The written notice of claim shall be furnished to the Engineer prior to starting the contested work. Oral notification by the Contractor or its representative will be documented by the Engineer and shall be confirmed in writing by the Contractor within ten days.

If the basis of potential claim does not become apparent until the Contractor has proceeded with the work, the Contractor or its representative shall immediately make oral notification to the Engineer of the intent to make claim for additional compensation when the basis becomes evident, followed by written confirmation within ten days of the oral notification.

The written notice of potential claim shall set forth the reasons the Contractor believes additional compensation is warranted, the nature of cost involved, and the estimated total amount of the claim.

The Contractor hereby agrees to waive any claim for additional compensation if timely written notification is not furnished and the Engineer is not provided the opportunity to keep account of or determine costs, to incorporate alternate methods of accomplishing the disputed work, or to otherwise resolve the claim.

A claim will not be considered if submitted more than 30 days after the Contractor receives final payment.

Nothing in this section shall be construed as establishing any claim contrary to the terms of Section 4.2.

## **SECTION 6. CONTROL OF MATERIAL**

### **6.1 MATERIALS:**

All materials and equipment furnished under this contract shall be new unless otherwise specified.

### **6.2 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS:**

The materials used on the work shall conform to requirements of the contract. To expedite the inspection and testing of materials, the Contractor shall notify the Engineer of proposed sources of materials prior to delivery. At the option of the Engineer, materials may be approved at the source of supply before delivery is started. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources.

### **6.3 SAMPLES, TESTS, CITED SPECIFICATIONS:**

Materials, prior to incorporation in the work, must be inspected, tested, and approved for use by the Engineer. In lieu thereof, the Engineer may permit or require the Contractor to furnish certification for certain materials. Work in which unapproved materials are used shall be performed at the Contractor's risk and are subject to inspection, test, or rejection. Copies of tests will be furnished to the Contractor's representative when requested.

Samples taken and tests made will be in accordance with the most recent standard or tentative standard methods of AASHTO, ASTM, and the "South Dakota Department of Transportation, Materials Manual-Sampling and Testing Procedures," which are current on the date of advertisement for bids. Samples will be taken and tests made by a representative of the City and at the City's expense except as otherwise stipulated.

If a discrepancy exists, the order of precedence is as follows:

- A. Department's Materials Manual.
- B. AASHTO.
- C. ASTM.

### **6.4 PLANT INSPECTION:**

The Engineer may inspect materials at the source. In the event plant inspection is undertaken, the following conditions shall be met:

- A. The Engineer shall have the cooperation and assistance of the Contractor and the producer.
- B. The Engineer shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
- C. Adequate safety measures shall be provided and maintained.

The City reserves the right to retest materials that have been tested and accepted at the source of supply after the same have been delivered and to reject materials that do not meet the requirements of the specifications or those established for the specific project.

## **6.5 STORAGE OF MATERIALS:**

Materials shall be stored to ensure the preservation of quality and fitness for the work. Stored materials shall be located so as to facilitate prompt inspection. Approved portions of the project area may be used for storage purposes and for the placing of the Contractor's plant and equipment. Additional space required must be provided by the Contractor at his expense. Private property shall not be used for storage purposes without written permission of the owner or lessee. If requested, copies of such written permission shall be furnished to the Engineer. Storage sites shall be restored to their original condition by the Contractor at his expense.

## **6.6 HANDLING MATERIALS:**

Materials shall be handled in such a manner as to preserve their quality and fitness for the work. Aggregates shall be transported from the storage site to the work in tight vehicles constructed as to prevent loss or segregation of materials after loading and measuring, in order that there may be no inconsistencies in the quantities of materials intended for incorporation in the work as loaded, and the quantities as received at the place of operations.

## **6.7 UNACCEPTABLE MATERIALS:**

Materials not conforming to the requirements of the specifications shall be considered as unacceptable and will be rejected and shall be removed immediately from the site of the work unless otherwise instructed by the Engineer. Rejected material, the defects of which have been corrected, shall not be used unless approval has been given.

## **6.8 CITY-FURNISHED MATERIAL:**

The Contractor shall furnish materials required to complete the work, except those specified to be furnished by the City. Material furnished by the City will be delivered or made available to the Contractor at points specified in the contract documents.

The Contractor will be held responsible for material delivered. Deductions will be made from monies due for any shortages, deficiencies, and damage that may occur to the material after delivery. Demurrage charges, resulting from the Contractor's failure to accept the material at the designated time and point of delivery will also be deducted from monies due.

The cost of handling and placing materials after they are delivered to the Contractor shall be considered as included in the contract price for the item in connection with which they are used.

## **SECTION 7. LEGAL SPECIFICATIONS AND RESPONSIBILITY TO PUBLIC**

### **7.1 LAWS TO BE OBSERVED:**

The Contractor shall keep informed of, and comply with, all federal, state, and local laws and regulations, and all judicial orders and decisions, which affect those engaged or employed on the work, or which affect the conduct of the work. The Contractor shall protect and indemnify the City and its representatives against any claim or liability arising from, or based on, the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor, subcontractors, suppliers of materials or services, or their employees.

### **7.2 PERMITS, LICENSES, AND TAXES:**

The Contractor shall procure required 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.

### **7.3 DIRECTION BY THE ENGINEER:**

When the contract provides that work shall be “contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned,” it shall be understood as if the expression were followed by the words “by the Engineer” or “to the Engineer” unless the contents of the specifications clearly indicate otherwise.

### **7.4 PATENTED DEVICES, MATERIALS, AND PROCESSES:**

If the Contractor employs any design, device, material, or process covered by letters of patent 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, affected third party, or political subdivision from any and all claims for infringement by reason of the use of such patented design, device, material or process, trademark or copyright, and indemnify the City for costs, expenses, and damages caused by reason of any infringement during the prosecution or after the completion of the work.

### **7.5 RESTORATION OF SURFACES OPENED BY PERMIT:**

The right to construct or reconstruct utility service in the street or to grant permits for same, at any time, is hereby expressly reserved by the City. The Contractor shall not be entitled to damages either for the digging up of the street or for delay occasioned thereby.

When an individual, firm, or corporation is authorized through a duly executed permit from the City, the Contractor shall allow parties bearing such permits to make openings in the street. When ordered by the Engineer, the Contractor shall make the necessary repairs due to such openings. Necessary work will be paid for as extra work, or as provided in these specifications, and will be subject to the same conditions as original work performed.

## **7.6 SANITARY HEALTH AND SAFETY PROVISIONS:**

The Contractor shall provide and maintain in a neat, sanitary condition accommodations for the use of employees as necessary to comply with the requirements of the State Department of Health. Attention is directed to federal, state, and City laws, rules, and regulations concerning construction safety and health standards.

## **7.7 PUBLIC CONVENIENCE AND SAFETY:**

The Contractor shall conduct his work to ensure the least possible obstruction to public use. The safety and convenience of the general public, the residents along the project, and the protection of persons and property shall be provided for by the Contractor as specified under Section 4.4.

## **7.8 RAILWAY-HIGHWAY PROVISIONS:**

When the Contractor is required or elects to haul materials across the tracks of any railway, arrangements shall be made by the Contractor with the railway company for new private crossings required or for the use of existing private crossings.

Work to be performed by the Contractor on the railroad right-of-way shall be performed without unnecessary interference with the movement of trains or public use upon the track of the railway company.

## **7.9 BARRICADES AND WARNING SIGNS:**

The Contractor shall provide, erect, and maintain necessary barricades, suitable and sufficient lights, danger signals, signs, and traffic control devices. The Contractor shall take all necessary precautions for the protection of the work and safety of the public. Streets closed to public use shall be protected by barricades. Obstructions shall be illuminated during hours of darkness. Warning signs shall be provided to control and direct public use.

The Contractor shall erect warning signs in advance of the project where operation may interfere with the use of the street by public use and at intermediate points where the new work crosses or coincides with an existing street.

As a minimum, barricades, warning signs, lights, temporary signals, and other protective devices must conform with the Manual on Uniform Traffic Control Devices for Streets and Highways issued by the United States Department of Transportation and as shown on the plans.

The work specified in the foregoing shall be incidental to other items of the contract, unless a bid item for "Traffic Control" is provided in the contract; in which case, barricades and warning signs shall be subject to the requirements as specified.

## **7.10 USE OF EXPLOSIVES:**

When the use of explosives is necessary for the prosecution of the work, the Contractor shall not endanger life or property, including new work. The Contractor shall be responsible for all damage resulting from the use of explosives.

The Contractor shall comply with all laws and ordinances, as well as with Titles 29 and 30 of the Code of Federal Regulations, including 29 C.F.R. §1926, Safety and Health Regulations for Construction, whichever is the most restrictive, in the use, handling, loading, transportation, and storage of explosives and blasting agents.

Explosives shall be stored securely in compliance with laws and ordinances, and such storage places shall be clearly marked. The Contractor shall notify property owners and public utility companies having structures or facilities in proximity to the site of the work of their intention to use explosives. Such notice shall be given sufficiently in advance to enable them to protect their property from injury.

#### **7.11 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE:**

The Contractor shall be responsible for the preservation of public and private property, and shall protect from disturbance or damage, all land monuments and property landmarks until the Engineer has witnessed or referenced their location and shall not move them until directed.

The Contractor shall be responsible for all damage or injury to property during the prosecution of the work resulting from an act, omission, neglect, or misconduct in his manner or method of executing the work, or due to defective work or materials. Responsibility will not be released until the project has been completed and accepted.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the non-execution thereof by the Contractor, such property shall be restored at the Contractor's expense to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring as may be directed, or make good such damage or injury.

#### **7.12 RESPONSIBILITY FOR DAMAGE CLAIMS:**

The Contractor shall indemnify and save harmless the City, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the said Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of said Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the "South Dakota Workers' Compensation Law," or any other law, ordinance, order, or decree; and so much of the money due the said Contractor under and by virtue of his contract as may be considered necessary by the City for such purpose may be retained for the use of the City; or in case no money is due, the Contractor's surety may be held until such suit or suits, actions or actions, claim or claims for injuries, or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the City; money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that he is adequately protected by public liability and property damage insurance.

#### **7.13 INSURANCE:**

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner. Each contractor shall maintain for the life of the contract, Workmen's Compensation, Public Liability and Property Damage Insurance, and

Automobile and Truck Insurance, as will protect him from all claims which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them and also against any special hazards which may be according to the following requirements:

A. WORKMEN'S COMPENSATION INSURANCE

The contractor shall maintain such insurance for the life of the contract as will protect himself and the City from claims under Workmen's Compensation Acts.

B. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The Contractor shall maintain for the life of the contract Public Liability and Property Damage Insurance with minimum limits of \$1,000,000 for bodily injuries, including accidental death, to any one person and \$1,000,000 for more than one person in any one accident. The minimum limits for Property Damage Insurance shall be \$2,000,000.

The above may be replaced by a combined single limit of \$2,000,000.

Property Damage Liability Insurance shall further include coverage for injury to, or destruction of, any property arising out of collapse of, or structural injury to, any building or structure due to:

- (1) Grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work or
- (2) Moving, shoring, underpinning, razing, or demolition of any building or structure, or removal or rebuilding of any structural support thereof,
- (3) Injury to, or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith below the surface of the ground, if such injury or destruction is caused by, or occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating or drilling, or
- (4) Injury to, or destruction of, public or private property at any time resulting therefrom, including paint damage.
- (5) The Property Damage Liability Insurance shall include coverage for injury to, or destruction of, any property arising out of blasting or explosion.
- (6) The Contractor agrees to indemnify and save harmless the Owner (City of Huron) for all accidents arising out of the Contractor's operation in connection with this project. Evidence of Contractual Liability is required.

C. AUTOMOBILE AND TRUCK INSURANCE:

The Contractor shall keep and maintain for the life of the contract Automobile and Truck Public Liability, Bodily Injury and Property Damage Insurance, including hired and non-owned auto with minimum limits as follows:

- (1) Injury to, or death of, one person ..... \$1,000,000



- (2) Injury or death, more than one person in a single accident ..... \$1,000,000
- (3) Property Damage \$2,000,000

The above may be replaced by a combined single limit of \$2,000,000.

**D. BUILDERS RISK INSURANCE ON BUILDINGS, STRUCTURES, EQUIPMENT AND APPLIANCES:**

The Contractor shall effect and maintain fire, extended coverage, vandalism, malicious mischief, all risk including theft, in the full amount of his contract, upon any building, structure, equipment and appliance in the process of construction or installation under City contract and upon all materials on site and intended for use therein until appliances have finally accepted by the Owner and "All Risk Including Theft" must be entered on the certificate.

**E. CERTIFICATES OF INSURANCE:**

- (1) Certificates of the above insurance shall be filed with the City Engineer and shall be subject to the Owner's approval for adequacy of protection. Each respective Contractor shall provide the certificates for the insurance hereinbefore required. The insurer shall state in his certificate that no cancellation of said insurance will be made without at least thirty (30) days prior notice to the Office of the City Engineer, P.O, Box 1369, Huron, SD 57350, in writing.
- (2) The Owner's or City Engineer's approval or acceptance of such certificates of insurance shall in no way release or relieve the respective contractor from any responsibility, liability or obligation devolving upon him.
- (3) All insurance policies and certificates shall be issued only by companies authorized to do business in the State of South Dakota. It shall be the contractor's responsibility to keep the respective insurance policies and coverages current and in force for the life of the contract.

**7.14 OPENING SECTIONS OF PROJECT TO PUBLIC USE:**

The provisions of this section shall apply to those projects or portions of projects on which the Contractor is not required to maintain traffic as specified in Section 4.4. Such opening shall not constitute acceptance of the work, or part thereof, or a waiver of conditions of the contract. On such portions of the project as are accepted for use of traffic, the Contractor shall not be responsible for expense entailed in maintenance for public use. Damage to the project not attributable to use, or unforeseeable causes as set forth in Section 7.15 shall be repaired by and at the Contractor's expense. The repair of damage caused by use that is not attributable to the Contractor's actions shall be done by the Contractor on a basis agreed to prior to the repair.

If the Contractor is dilatory in completing the work, the Engineer may order all or a portion of the project open to use. In such event, the Contractor shall not be relieved of liability and responsibility during the period the work is so opened prior to final acceptance. The Contractor shall conduct the remainder of construction operations so as to cause the least obstruction to traffic.

#### **7.15 CONTRACTOR'S RESPONSIBILITY FOR WORK:**

Until final written acceptance of the project by the City, the Contractor shall have the charge and care thereof, and shall take every precaution against injury or damage to any part thereof by action of the elements or other cause, whether arising from the execution or from the nonexecution of the work.

In case of suspension of work for any cause, the Contractor shall (at the Contractor's expense) be responsible for the project and take precautions as may be necessary to prevent damage to the project, provide for drainage, and shall erect necessary temporary structures, signs, or other facilities required to maintain the project. During such period of suspension of work, the Contractor shall properly and continuously maintain, in an acceptable growing condition, living material in newly established plantings, seeding, and sodding furnished under this contract, and protect new tree growth and other important vegetative growth against injury.

The Contractor shall bear all costs for work performed during periods of work suspension not covered by a written suspension order, or when the work is suspended for the Contractor's failure to comply with the provisions of the contract, or when work is suspended by option of the Contractor.

#### **7.16 FURNISHING RIGHT-OF-WAY:**

The City will be responsible for the securing of necessary rights-of-way in advance of construction. Exceptions will be indicated in the contract.

#### **7.17 PERSONAL LIABILITY OF PUBLIC OFFICIALS:**

In carrying out any of the provisions of the contract documents or in exercising any power or authority granted to it by or within the scope of the contract, there shall be no liability upon the City or its authorized representatives, either personally or as officials of the City, it being understood that in all such matters they act solely as agents and representatives of the City.

#### **7.18 NO WAIVER OF LEGAL RIGHTS:**

The City shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the contract. The City shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or its sureties, or both, such damages as it may sustain by reason of his failure to comply with the terms of the contract. Neither the acceptance of 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 time, nor any possession taken by the City, shall operate as a waiver of any portion of the contract or of any power herein reserved, or of any right to damages. A waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

**7.19 COOPERATION WITH THE ARCHAEOLOGICAL RESEARCH CENTER AND DEPARTMENT OF EDUCATION AND CULTURAL AFFAIRS:**

The Contractor shall notify the Engineer of any archaeological or historical site which the Contractor might discover, and find, locate, or become aware of during construction operations. The Contractor shall suspend construction operations at the site or sites for a period not to exceed 72 hours to give the Archaeological Research Center and Department of Education and Cultural Affairs an opportunity to observe, investigate, and inspect such site or sites.

**7.20 ENVIRONMENTAL PROTECTION:**

The Contractor shall comply with all federal, state, and City laws and regulations controlling pollution of the environment. Necessary precautions shall be taken to prevent pollution of streams, lakes, ponds, and reservoirs from harmful materials and to prevent pollution of the atmosphere.

**7.21 Deleted**

**7.22 CIVIL RIGHTS REQUIREMENTS:**

- A. If the Contractor fails to perform the contractual provisions, the contract may be terminated in whole or in part by the City, and the Contractor shall be liable for any costs or expense incurred by it in obtaining from other sources the work and services to be rendered or performed, or the goods or properties to be furnished or delivered to the City under the contract to be terminated.
- B. Should the City Commission find that the Contractor has engaged in discrimination in connection with such contract and issue a cease and desist order with respect thereto, the City shall withhold up to 15 percent of the contract price until the Commission's order has been complied with or the Contractor has been adjudicated not guilty of such discrimination.
- C. The Contractor will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission or its representatives, to ascertain compliance.
- D. The above shall be binding on all subcontractors or suppliers.

**7.23 ADA REQUIREMENTS:**

The Contractor will provide services in compliance with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.

**7.24 AUDIT:**

The Contractor shall allow the City or its representatives access to inspect, audit, and/or reproduce, or all three, any books, documents, papers, and records (in whatever form they may be kept, whether written, electronic, or other) or interview any of the Contractor's employees, all subcontractors and all suppliers, and their respective employees involving transactions related to the contract for two years after final payment.

## **SECTION 8. PROSECUTION AND PROGRESS**

### **8.1 NOTICE TO PROCEED:**

- A. The return of the signed and executed contract to the Contractor shall serve as notice the contract bond is acceptable, the contract is in force, and the Contractor may complete arrangements for materials and other work according to the contract documents.
- B. The Contractor shall begin work as specified in the notice to proceed issued by the City and shall prosecute the work vigorously and continuously to completion, except when it is physically impossible to do so due to weather conditions or other unavoidable handicaps. The necessity of discontinuing and resuming work on any portion of the contract shall be determined by the Engineer.
- C. The Engineer may, if provided for in the contract documents, give a limited notice to proceed as to any portion of the work under the contract.

### **8.2 WORK PROGRESS:**

- A. The progress of the work shall be at a rate sufficient to complete the contract within the time allowed. The Contractor's sequence of operations shall be such as to cause as little inconvenience to the general public as possible.
- B. Whenever the Contractor becomes aware of its inability to complete the work within the contract time it shall notify the City in writing.

### **8.3 PROGRESS SCHEDULE:**

- A. The Engineer may direct the Contractor to prepare and submit a progress schedule for approval that will ensure the completion of the project within the contract time specified. The progress schedule shall be submitted at the preconstruction meeting. However, the Engineer may direct the Contractor to submit the progress schedule up to one week prior to the preconstruction meeting to allow for time to review the schedule.
- B. This schedule shall be in the form of a bar chart or critical path diagram that shows the proposed starting dates and completion times for each of the major construction operations. This schedule shall be complete, from starting date to completion date, covering all progress controlling items of work. A progress controlling item is one that must be completed either partially or completely to permit continuation of progress. The time intervals may be expressed as working days after the contract starting date or as calendar dates.
- C. The progress schedule shall reflect contract requirements regarding the order of performing the work, and shall be based on an adequate daily working hour schedule, with sufficient materials, equipment, and labor being furnished to guarantee completion of the project within the contract time.
- D. The progress schedule will be used to identify the controlling operations and as a check on the rate of progress. A controlling operation is that part of a progress controlling item or items that must be performed before the next progress controlling item of work can be started. For each major progress controlling item and if requested by the Engineer, the schedule shall show the intended rate of production during the period such item is the controlling operation.
- E. Revised or updated progress schedules shall be prepared and submitted for approval as requested by the Engineer in the event adjustments become necessary during the progress of the work. At a minimum, revised or updated progress schedules shall be submitted monthly. However, the Engineer has the right to increase the frequency of the submittal of revised or updated progress schedule to a

weekly or biweekly basis. Approval of the Contractor's progress schedules by the Engineer in no way justifies the schedules, but simply indicates concurrence in their reasonableness and feasibility on the assumption that the Contractor will make every effort required to meet them. The Contractor shall have a current progress schedule approved by the Engineer before pay applications are approved.

#### **8.4 PRECONSTRUCTION MEETING:**

The Engineer may schedule and conduct a preconstruction meeting. The Contractor and the intended subcontractors, if known, shall participate in this conference. The Engineer will invite representatives of railroads and utilities and others having responsibilities or interest in the work.

#### **8.5 CONTRACT TIME:**

- A. When a completion date is specified in the contract documents, the contract time shall be the time from the starting date stated in the notice to proceed to the date specified for completion as shown in the contract documents, both dates inclusive. When working days or calendar days are specified in the contract documents, the contract time shall be the time as calculated with the number of working days or calendar days as specified in the contract documents. The contract time may be extended by the City as provided in these specifications in which event the contract time includes the new extension of time. The Contractor acknowledges that if it fails to complete the contract in said time, liquidated damages will be assessed against it as specified in Section 8.9.
1. **Completion Date Contracts:** The Contractor shall complete the contract on or before the completion date. Unless otherwise noted in the contract documents, the Contractor may commence work any time after receipt of the signed contract, specifications permitting, and issuance of the notice to proceed. Section 8.6 will not apply. Liquidated damages will be assessed according to Section 8.9 for each working day beyond the completion date that the contract remains uncompleted.
  2. **Calendar Day Contracts:** The Contractor shall complete the contract within the number of consecutive calendar as specified. The calendar day count will commence on the date specified in the contract documents. If the contract documents do not specify a starting date the calendar day count will begin when the Contractor commences work; however, the calendar day count will begin no later than 10 calendar days after the issuance of the notice to proceed. Section 8.6 will not apply. Liquidated damages will be assessed according to Section 8.9 for each calendar day beyond the specified number of calendar days that the contract remains uncompleted.
  3. **Working Day Contracts:** The Contractor shall complete the contract within the number of working days specified. The working day count will commence on the date specified in the contract documents. If the contract documents do not specify a starting date, the working day count will begin when the Contractor commences work; however, the working day count will begin no later than 10 calendar days after the issuance of the notice to proceed. Section 8.6 will apply. Liquidated damages will be assessed according to Section 8.9 for each working day beyond the specified number of working days that the contract remains uncompleted.
- B. Intermediate or interim contract periods may be designated for completion of a specific item or certain portions of the contract. The contract period and the liquidated damages, if any, for each portion will be listed in the contract documents.
- C. **Combination Contracts:** When the contract documents specify a combination of completion date, calendar day, or working day contracts, the Contractor shall complete the project within each time frame specified. Liquidated damages will be assessed according to Section 8.9 for failure to complete the project within the contract time specified for any combination of contract types.

- D. All work must be completed within the contract time unless otherwise indicated in the contract documents including restoration and landscaping. The Engineer may order the Contractor to delay installation of items affected by seasonal limitations. If such directive is made, these items will not be subject to the contract time provided the Contractor prosecutes this work in a manner satisfactory to the Engineer when the item is no longer affected by seasonal limitations.

#### 8.6 WEEKLY RECORD OF WORKING DAYS:

- A. On contracts with completion provisions based upon working days, the Engineer will furnish the Contractor a weekly or biweekly statement showing the number of working days charged to the Contractor for the preceding week(s), the number of working days specified for completion of the project, and the date or revised date for completion.
- B. Working days will be charged under the following circumstances:
  - 1. **Prior to Commencement of Work:** Beginning on the date designated in the notice to proceed, or beginning on the specified starting date, or as soon thereafter as provided in the contract documents, a working day will be charged for every calendar day other than Saturday, Sunday, or a recognized legal holiday. Working days will be charged for Saturdays if a mandatory six-day workweek is specified in the contract documents.
  - 2. **After Commencement of Work:** One full working day will be charged for any weekday, exclusive of Saturdays, Sundays, or a recognized legal holiday, when weather or other conditions (not under control of the Contractor) will permit construction operations to proceed for not less than 3/4 of a normal workday in the performance of a controlling item of work as determined by the Engineer. If such conditions allow operations to proceed for at least 1/2 but less than 3/4 of the normal working hours, 1/2 working day will be charged.

Working days will not be charged for Saturdays (unless a mandatory six-day workweek is specified in the contract documents), Sundays, and recognized legal holidays the Contractor does not work. Working days will be Sundays and recognized legal holidays the Contractor does work.

As an incentive to the Contractor to expedite the work, working days will not be charged for Saturdays that the Contractor does work, unless a mandatory six-day workweek is specified in the contract documents.

- C. Any objection by the Contractor to such weekly determinations shall be deemed waived and shall not thereafter be made the basis of any claim, unless the Contractor shall, within seven calendar days after receipt of a weekly or biweekly statement, file with the Engineer its written protest setting forth its objections and reasons. If the Contractor's objection to the working day count is made on the grounds it was unable to work due to causes beyond its control, the Contractor shall state its reasons in writing, furnish proof to establish its claim, and state the approximate number of calendar days it estimates it was delayed. The Engineer shall then determine the appropriate number of working days to be charged under the contract.

## 8.7 TEMPORARY SUSPENSION OF WORKING DAYS:

When, in the judgment of the Engineer, unfavorable weather makes it impractical to secure acceptable results, or other conditions warrant an order to suspend working days, the Engineer shall issue to the Contractor a written order to suspend working days wholly or on any part of the contract. When conditions are again favorable for prosecution of the working days, the Engineer shall issue to the Contractor a written order to resume the suspended working days. Orders to suspend working days will not be written for short intermittent shutdowns due to weather conditions. The Contractor shall take every precaution to prevent any damage or unreasonable deterioration of the work during the time of suspended operations.

## 8.8 EXTENSION OF TIME:

- A. **Allowances for Delays:** The Contractor expressly covenants and agrees that in undertaking to complete the work within the contract time, he has taken into consideration and made allowance for all delays and hindrances that would ordinarily be anticipated in performing such work including, but not limited to, normal weather conditions and material lead times.
- B. **Request for Extension of Time:** The Contractor may submit a written request for an extension of contract time. Extension of time requests shall be submitted to the Engineer as soon as practical, but in no case shall such request be submitted after the expiration of the contract time to allow the City adequate time to review the request. The submission or acceptance of a request for extension of time shall not guarantee such extension will be granted. The Contractor's plea that insufficient time was specified is not a valid reason for an extension of time. The following items may be justification for extension of time:
  - 1. **Weather:** Extension of time due to adverse weather conditions at the site so unusual or severe as not to be reasonably anticipated, as determined by the Engineer, may be requested. An average or usual number of inclement working days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting an extension of time. The table below shall be used when determining the average or usual number of adverse weather days during a project. For partial months of construction, the number of adverse weather days for that month shall be prorated and rounded to the nearest whole number.

### Expected Adverse Weather Days

January	23
February	21
March	12
April	4
May	5
June	6
July	5
August	4
September	4
October	3
December	11
December	22

Note: Includes Holidays and Weekends

2. **Other Contractors:** An extension of time may be requested for delays caused by the noncompletion of essential work of other contractors, provided such noncompletion is the sole and only cause of delay, and where the Contractor has available on the site of the work all equipment, material, and labor necessary to proceed with the work. Nonperformance of the general contractor's subcontractor(s) will not be considered as warranting an extension of time.
  3. **Extra Work and Change Orders:** An extension of time may be requested for delays caused by extra work or by the issuance of a change order. It must be demonstrated the extra work or change order is a controlling item or affects the progress of the controlling item.
  4. **Work Stoppage:** An extension of time may be requested for delays caused by a general work stoppage in the area or a work stoppage affecting this project that is beyond the control of the Contractor, or where the Contractor has taken in good faith all steps made available to it by law to resolve the causes thereof and to terminate such work stoppage.
  5. **Acts by the United States Government:** An extension of time may be requested for delays caused by any act taken by the United States government that would affect fabrication or delivery of materials or equipment to the work site.
  6. **Court Proceedings:** An extension of time may be requested for delays caused by any court proceedings.
  7. **Extraordinary Delays:** An extension of time may be requested for extraordinary delays in the delivery of materials resulting from strikes, lockouts, freight embargoes, governmental acts, area wide shortage, or sudden disaster of a nature beyond the power of the Contractor or supplier to foresee and forestall. Delays due to slow delivery of materials from the supplier or fabricator when the material was available in warehouse stock, or when delivery was delayed for reasons of priority, late ordering, financial considerations, or other causes within the power of the Contractor to avoid, will not be a valid reason for an extension of contract time.
  8. **Other Delays:** An extension of time may be requested for other delays encountered by the Contractor beyond its control that make it impossible for the Contractor to complete the contract within the specified time.
- C. **Claims for Damages:** The Contractor shall have no claim for damages for any extensions or delays provided or mentioned in the preceding portions of this section; but the Contractor shall, in such cases, be allowed to petition for such extension of time as the City may grant in writing on account of such delay; provided however, the claim for such extension of time is made by the Contractor in writing immediately after any such delay occurs.
- D. **Extension of Time Granted:** No extension of time shall be granted or recognized except as specifically approved in writing to the Contractor. Oral representations or agreements by the Engineer or other City representatives shall not be binding.

#### **8.9 LIQUIDATED DAMAGES:**

- A. Time is of the essence of the contract. As delay in the diligent prosecution of the work may inconvenience the public, obstruct traffic, interfere with business, and/or increase costs to the City such as engineering, administration, and inspection, it is important the work be prosecuted vigorously to completion. Should the Contractor, or in case of default the surety, fail to complete the work within the contract time plus such extensions of time as may be allowed by the City, a deduction at the liquidated damages rate specified below will be made for each and every calendar day or working day, whichever is specified, that such contract remains uncompleted after expiration of the contract time. In either event, the Contractor, or the Contractor's surety shall be responsible for all costs incidental to the completion of the work, and shall be required to pay to the City the liquidated damages stipulated.



B. Schedule of Liquidated Damages:

<b>Original Contract Amount</b>		
		Amount of Liquidated Damages Per Working Day or Calendar Day
<b>From More Than</b>	<b>To and Including</b>	
\$0	\$50,000	\$250
\$50,000	\$100,000	\$325
\$100,000	\$500,000	\$500
\$500,000	\$1,000,000	\$725
\$1,000,000	\$2,000,000	\$900
\$2,000,000	\$4,000,000	\$1,450
\$4,000,000	\$6,000,000	\$1,650
\$6,000,000	\$8,000,000	\$1,800
\$8,000,000	\$10,000,000	\$2,150
\$10,000,000	Over \$10,000,000	\$2,300

- C. The parties agree that liquidated damages cannot be determined to an actual amount in the event the work remains uncompleted after expiration of the contract time. The parties agree the amount set forth above bears a reasonable relationship to probable damages and is not disproportionate to any damages due the City for loss to the City and public due to obstruction of traffic, interference with business, and/or increased costs to the City such as engineering, administration, and inspection after the expiration of the contract time, or extension thereof. Such liquidated damages may be deducted from any money due or to become due the Contractor under the contract, and the Contractor and its surety shall be liable for any liquidated damages in excess of the amount due the Contractor.
- D. Allowing the Contractor to continue and finish the work, or any part of it, after the expiration of the contract time or extension thereof, shall in no way operate as a waiver on the part of the City of any of its rights or remedies under the contract, including its right to liquidated damages pursuant to this provision.

**8.10 WORK ON SUNDAYS OR LEGAL HOLIDAYS:**

- A. Except when an accelerated work schedule is required in the contract documents, no work requiring inspection will be allowed on Sundays or holidays except with permission of the City Engineer. Written permission from the City Engineer is not required to work the second Monday in October (Native American Day).
- B. Such work as may be required to properly maintain or protect completed or partially completed construction, or to maintain lights and barricades, will be permitted on Sundays or holidays without specific permission from the Engineer.

### **8.11 COMPETENT SUPERINTENDENT AND COMPETENT INDIVIDUAL:**

During the life of the contract, the Contractor shall provide and have at all times a competent superintendent in charge of the overall project who will be personally available at the site of the work within 24-hours' notice. This superintendent may be either the Contractor himself or a responsible employee who has been authorized to act in the Contractor's behalf. This individual shall be fully authorized to:

- A. Conduct all business with the subcontractors.
- B. Negotiate and execute all contract change orders or directly coordinate with the Contractor on such matters.
- C. Execute the orders and directions of the Engineer without delay.
- D. Promptly supply the materials, equipment, tools, labor, and incidentals necessary for prosecution of the work.

At all times while work is actually being performed, the Contractor shall have at the site of the work a competent individual who is:

- A. Authorized and fully capable of managing, directing, and coordinating the work in progress.
- B. Thoroughly experienced in the type of work being performed.
- C. Capable of reading and thoroughly understanding the plans and specifications.
- D. Authorized to receive instructions from the Engineer.

If this competent individual is an employee of someone other than the Contractor, the Contractor shall notify the Engineer as to who will act in the supervisory capacity stated above. The competent individual and the superintendent having overall responsibility for the work may be one and the same person if constantly available in person on the project and fully qualified in all other respects.

### **8.12 CONTRACTOR'S EMPLOYEES, METHODS, AND EQUIPMENT:**

#### **A. Workers:**

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Upon request by the Engineer, the Contractor shall submit satisfactory qualification evidence for any person engaged in special work requiring professional training. Any person employed by the Contractor, or by any subcontractor who does not perform assigned work in a proper and skillful manner, or who is intemperate or disorderly, shall be removed from the project forthwith by the Contractor upon written order of the Engineer, and shall not be employed again on any portion of the work without the Engineer's consent. Should the Contractor fail to remove such person, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may suspend the work until the Contractor has complied with the orders.

#### **B. Methods and Equipment:**

1. The methods and equipment used by the Contractor shall produce a satisfactory quality of work and shall be adequate to maintain the schedule of progress specified. Equipment used on any portion of the project shall be such, and its use so regulated, that no serious or irreparable damage to the roadway, adjacent property, or other streets or highways will result from its use. If damage does occur to these areas, suitable repairs shall be made at the Contractor's expense.

2. When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the contract documents, the Contractor is free to use any methods or equipment that will accomplish the contract work in conformity with the requirements of the contract documents, as demonstrated to the satisfaction of the Engineer.
3. When the contract documents specify that the construction be performed by use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Engineer.
4. If the Contractor desires to use a method or type of equipment other than specified in the contract documents, the Contractor may request authority from the Engineer to do so. The request shall be in writing and shall include a full description of the method and equipment proposed to be used, and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor shall be fully responsible for producing construction work in conformity with contract requirements.
5. If after trial use of the substituted methods or equipment, the Engineer determines the work produced does not meet the requirements of the contract documents, the Contractor shall discontinue use of the substitute method or equipment, and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the defective work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the construction items involved, or in contract time, as a result of authorizing a change in methods or equipment under these provisions.

#### **8.13 BREACH OF CONTRACT:**

- A. The Contractor's failure to perform in any of the following particulars shall constitute a breach of contract:
  1. Failure by the Contractor to begin work at the time specified.
  2. Failure by the Contractor to complete the work within the contract period or any extension thereof.
  3. Failure or refusal by the Contractor to comply with an order of the Engineer within a reasonable time.
  4. Contractor's persistent disregard of laws, ordinances, or instructions of the Engineer.
  5. Contractor's repeated failure to provide sufficient workers, equipment, or materials to ensure the proper and timely completion of the work.
  6. Failure or refusal by the Contractor to remove rejected materials.
  7. Failure or refusal by the Contractor to replace, perform anew, or correct any defective or unacceptable work.
  8. Contractor's discontinuance of the work without authorization by the City.
  9. Bankruptcy or insolvency of the Contractor, or the making of an assignment for the benefit of creditors by the Contractor.
  10. Failure by the Contractor to carry on the work in an acceptable manner. Upon Contractor's breach of the contract in any particular above, the City shall be entitled to give notice of default to the Contractor and surety. The notice of default shall indicate how the contract has been breached and shall indicate what action the Contractor must take to cure such breach. The Contractor or its surety shall have ten business days to take substantial action to cure such breach.
- B. If the Contractor or its surety does not, within the time for cure provided in the notice of default, take substantial action to cure such breach, the Contractor shall, at the direction of the Engineer, relinquish possession and control of the work, and the City shall thereupon have full power and authority, without violating the contract or bond, to terminate the contract, to take over the completion of the work, to appropriate or use any or all materials and equipment at the site that may be suitable and acceptable,

to enter into agreements with others for the completion of said contract according to the terms and provisions thereof, or to use such other methods as in the City's opinion may be required for the completion of said contract in an acceptable manner.

- C. The Contractor and its surety shall be liable for all outlay and expense incurred by the City, together with the costs of completing the work, and such costs may be deducted from any monies due or which may become due to the Contractor. In case such outlay and expense exceeds the sum that would have been payable under the contract, then the Contractor and its surety shall be liable for and shall pay to the City the amount of said excess.
- D. Neither the City, nor any officer, agent, or employee thereof, shall be in any way liable or accountable to the Contractor or the Contractor's surety for the method by which the completion of said work, or any portion thereof, may be accomplished, or for the price paid therefore. Neither by taking over the work nor by declaring the contract in default, shall the City forfeit the right to recover damages from the Contractor or the Contractor's surety for failure to complete the entire contract.
- E. The Contractor shall be liable for the City's attorney fees incurred as a result of the Contractor's breach of contract, including the cost of litigation.

#### **8.14 TERMINATION OF CONTRACT FOR EMERGENCIES:**

- A. The City may, by written order, terminate the contract, or any portion thereof, after the City determines that for reasons beyond the City's or Contractor's control, the Contractor is prevented from proceeding with or completing the work as originally contracted for, and termination would therefore be in the public interest. Reasons for termination may include, but are not limited to, executive orders of the President of the United States relating to prosecution of war or national defense, national emergency which creates a serious shortage of materials, orders from duly constituted authorities relating to energy conservation, and restraining orders or injunctions obtained by third-party citizen action resulting from national or local environmental protection laws or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor.
- B. When the City orders termination of a contract effective on a certain date, completed items of work as of that date will be paid for at the contract bid price. Payment for partially completed work will be made at agreed prices.
- C. Acceptable materials obtained by the Contractor for the work but which have not been incorporated therein, may, at the option of the City, be purchased from the Contractor at actual cost delivered to a prescribed location, or otherwise disposed of as mutually agreed.
- D. Reimbursement for organization of the work, other overhead expense (when not otherwise included in the contract), and moving equipment and materials to and from the job will be considered; the intent being that an equitable settlement will be made with the Contractor.
- E. The Contractor agrees to make all cost records available to the extent necessary to determine the validity and amount of each item claimed.
- F. Termination of a contract, or portion thereof, shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the work performed.

## **SECTION 9. MEASUREMENT AND PAYMENT**

### **9.1 MEASUREMENT OF QUANTITIES:**

Work completed under the contract will be measured by the Engineer according to United States standard measure.

The method of measurement and computation to be used in determination of quantities of material furnished and of work performed under the contract, will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and deductions will not be made for individual fixtures having an area of nine square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the Engineer.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions, except as otherwise provided in these specifications.

Items that are measured by the linear foot such as water main, sewer, guardrail, underdrains, etc., will be measured parallel to the base or foundation upon which such structures are placed, except as otherwise provided in these specifications.

In computing volumes of excavation, the average end area method or other mutually acceptable methods will be used.

The thickness of plates and galvanized sheet metal used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fractions of inches.

When the term "gauge" refers to the measurement of wire, it will mean the wire gauge specified in the AASHTO M 32 (ASTM A 82).

The term "ton" will mean the short ton consisting of two thousand (2,000) pounds avoirdupois. Materials that are measured or proportioned by weight shall be weighed on accurate, approved scales furnished by the Contractor at locations approved by the Engineer. The use of commercial scales may be permitted provided they are satisfactory to the Engineer and all charges for such use are paid by the Contractor. Except as provided elsewhere in the specifications, scales shall be accurate within .5 percent at any point throughout the range of use of the scale and sensitive to the weight indicated by twice the smallest graduation of the scale. The Contractor will be required to verify scale accuracy periodically.

The weight ticket shall accompany each load of material to the project and shall be presented to the Engineer prior to unloading the material. The weighing system shall provide the Engineer with a printed daily summary of the individual net weights with truck and pup identification numbers and the daily total weight by material type. The Contractor shall provide, and be responsible for, the verification by the state scale inspector, or by other feasible means as the Engineer may order, of scales and measures which the Contractor is to operate or use in connection with the work.

If the automated weighing system becomes inoperable during the work shift, the Contractor may furnish a scale person to perform the weighing duties according to the specified requirements and to complete the effected work shift. Within two working days, the weighing system shall be fully operational or the affected work items will not be allowed to continue.

Permanent commercial scales that are certified and meet the accuracy requirements are an acceptable alternative to the automated scale requirements.

Contractor furnished scale operators shall be experienced and fully capable of accurately operating the permanent commercial scales and portable automated scale systems should they become inoperable. Contractor furnished scale personnel are subject to approval by the Engineer.

All equipment, materials, labor, and incidentals required for the weighing system and scales shall be incidental to the related contract items.

Platform scales shall be of adequate length and capacity to permit weighing the entire hauling unit with one placement. In the case of tractor-trailer combinations, this will mean placement in one operation of the entire unit inclusive of the front axle of the tractor. It will be permissible to weigh the primary hauling unit and the auxiliary hauling ("pup") unit separately without uncoupling, provided the scale approach ramps are level for a sufficient distance and the auxiliary hauling unit coupling does not transfer significant weight to the primary hauling unit.

Trucks used to haul material being paid for by weight shall be weighed empty at such times as the Engineer directs, and each truck shall bear a plainly legible identification mark.

When payment of royalty is on a tonnage basis, weight determinations of pit materials that are used in the work will be based on weights of the produced materials at the time they are hauled from the pit site, including natural moisture. These materials will be weighed when stockpiled, except that where stockpiles are built at the pit site without weighing, the weight determination will be made when the material is hauled from the pit site. When material is stockpiled at the pit site without weighing, and is processed through a dryer in preparation for mixing with bituminous material, the tonnage for royalty purposes will be considered as the weight of the dried material, plus the weight of the bituminous material added.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided the body is of such shape that the volume may be readily and accurately determined.

When requested by the Contractor and approved by the Engineer in writing, material specified to be measured by the cubic yard or gallon may be weighed and such weights will be converted to cubic yards or gallons for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

Asphalt materials will be measured by the ton.

Validated refinery weigh tickets, accompanying bituminous materials transported from the refinery in truck transports, may be accepted for measurement purposes.

Asphalt materials shipped by rail shall be weighed, as determined by the Engineer, prior to use on the project.

Cement will be measured by the hundred weight (cwt).

Timber will be measured by the Thousand Feet Board Measure (M.F.B.M.) incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term "lump sum," when used as an item of payment, will mean complete payment for the work described in the contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include necessary fittings and accessories.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

## **9.2 SCOPE OF PAYMENT:**

The Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing materials and for performing work under the contract in a complete and acceptable manner and for risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof, subject to the provisions of Section 7.20.

Payment for an item of work shall include full compensation for furnishing labor, materials, equipment, and incidentals required to complete the work not specifically measured and paid for under a separate bid item.

If the "Basis of Payment" clause in the specifications relating to 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 item which may appear elsewhere in the specifications.

## **9.3 COMPENSATION FOR ALTERED QUANTITIES:**

When the accepted quantities of work vary from the quantities in the bid schedule, the Contractor shall accept as payment in full, payment at the original contract unit prices for the accepted quantities of work. Allowance will not be made for increased expense, except as provided in Section 4.2, or for loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations, or indirectly from unbalanced allocation among the contract items of overhead expense on the part of the bidder, and subsequent loss of expected reimbursements, or from other cause.

#### 9.4 EXTRA AND FORCE ACCOUNT WORK:

Extra work performed in accordance with the requirements and provisions of Section 4.3 will be paid for at the agreed prices stipulated in the order authorizing the work. The City may require the Contractor to do such work on a force account basis to be compensated in the following manner:

- A. **Labor:** For labor and supervisor in direct charge of the specific operations, the Contractor shall receive the rate of wage agreed upon in writing before beginning work or the actual rate paid in the event it is less than the agreed rate, for each and every hour that said labor and supervisor are actually engaged in such work.

If a laborer or supervisor is paid for "overtime" during a calendar week in which he is employed for part of that period on force account work, the City will pay to the Contractor a percentage of that portion of the overtime payment. For each such employee, this percentage will be the ratio which the total hours he worked on force account during the week bears to the total hours he worked during that week.

Overtime incurred due to the City requiring the Contractor to do force account work during periods not normally worked, will be paid 100 percent by the City. In order that the Engineer may verify wages paid and prorate overtime, the Contractor will be required to furnish to the Engineer certified payrolls during the period force account work is in progress.

An amount equal to 15 percent of the sum for labor will also be paid the Contractor as compensation for administrative and overhead costs.

- B. **Bond, Insurance, and Tax:** For property damage, liability, and workers' compensation insurance premiums, unemployment insurance contributions, excise taxes, and social security taxes on the force account work, the Contractor shall receive the actual cost to which no percentage will be added. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax. In lieu of furnishing itemized statements to substantiate the costs of property damage, liability and workers' compensation insurance premiums, unemployment insurance contributions, and social security tax, the Contractor may elect to receive an amount equal to 27.1 percent of the actual labor costs (excluding the 15 percent for administrative and overhead costs) as compensation for those costs.
- C. **Materials:** For materials accepted by the Engineer and incorporated into the project, the Contractor shall receive the actual cost of such materials, including transportation charges paid (exclusive of machinery rentals as hereinafter set forth), to which cost 15 percent will be added as compensation for administrative and overhead costs.
- D. **Equipment:** For machinery or special equipment including fuel and lubricants, plus transportation costs, authorized by the Engineer, the Contractor shall be paid in accordance with the provisions and rates set forth in the South Dakota Equipment Rental Rates Book, which is currently established as the "Rental Rate Blue Book" published by Equipment Watch, a subsidiary of Penton Business Media Inc. For purposes of determining an hourly rate, the monthly rate divided by 176 shall be used. This rate will be adjusted for regional factors, age, and operating expenses as set forth in the "Rental Rate Blue Book."



Standby rates shall apply when the work requires a piece of equipment, not already on the project, be brought in and through no fault of the Contractor, this equipment is on standby status. Standby rates shall be 50 percent of the normal base rates without the operating expenses. Standby rates shall not exceed eight hours per day. When a unit works for a portion of a day and is on standby for a portion of a day, the total time allowed shall not exceed eight hours for that day.

The costs for move in and move out of equipment not already on the project shall be at standby rates. This is in addition to the applicable rates for the hauling unit moving in and returning empty to its point of origin.

Equipment will be paid for at invoice prices if necessary equipment is not of a type owned by the Contractor, or if equipment is available in the area at a cost less than the cost of paying force account, including move in and move out for Contractor-owned equipment.

- E. **Miscellaneous:** Additional allowance will not be made for general superintendence or other costs for which no specific allowance is herein provided.
- F. **Compensation:** The Contractor's representative and the Engineer shall compare records of the cost of work done as ordered on a force account basis.
- G. **Statements:** Payment will be made for work performed by force account based on itemized statements of the cost of such force account work detailed as follows:
  - 1. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
  - 2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
  - 3. Quantities of materials, prices, and extensions.
  - 4. Transportation of materials.
  - 5. Cost of property damage, liability and workers' compensation insurance premiums, unemployment insurance contributions, and social security tax.

Statements shall be accompanied and supported by paid invoices for materials used including transportation charges. However, if materials used on the force account work are not specifically purchased for such work, but are taken from the Contractor's stock, the Contractor shall furnish an affidavit certifying that such materials were taken from his stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

- H. **Subcontracting:** When work on a force account basis is performed by a subcontractor in accordance with the provisions of an extra work order, a percentage will be allowed the prime Contractor for the administrative expenses incurred in connection with the work. This administrative allowance will be based on the following table, and is applicable to charges for labor and materials only. The allowance will be applied to all charges and added percentages specified in paragraphs A and C above. Bid items in the original contract are not eligible for this administrative allowance.

\$0 to \$1,000	10 percent
\$1,000.01 to \$10,000	\$100 plus 5 percent of excess over \$1,000
Over \$10,000	\$550 plus 3.5 percent of excess over \$10,000

- I. **Profit:** To the sum of Items A through C, shall be added 10 percent for profit.
- J. The total cost of force account work shall be incorporated into the final contract amount. The excise tax due the South Dakota Department of Revenue shall be computed from the final contract amount.

**9.5 ELIMINATED ITEMS:**

Should items contained in the proposal be found unnecessary for the proper completion of the work, the Engineer may, upon written order to the Contractor, eliminate such items from the contract. Such action shall in no way invalidate the contract. When a Contractor is notified of the elimination of items, the Contractor will be reimbursed for work completed and all costs incurred, including transportation of materials prior to said notification and the return of unused materials to the supplier. In lieu of reimbursement for the return of eliminated materials, the City may elect to purchase such materials at the actual cost to the Contractor. Payment will not be made due to the elimination of pile shoes, regardless of work as may have been done or materials purchased prior to notification of the elimination of this item.

**9.6 PROGRESS PAYMENTS:**

Partial payments will be processed at least once each month as the work progresses. Biweekly progress payments may be made if the estimate amount exceeds \$10,000.

The Engineer may elect to submit biweekly payments for less than \$10,000 if deemed necessary.

Said payments will be based upon estimates prepared by the Engineer of the value of the work performed and materials complete in place, in accordance with the contract and for materials delivered in accordance with Section 9.7.

For each working day or calendar day charged after the contract time specified for the work as extended, the appropriate amount from the schedule of liquidated damages in Section 8.9 will be retained from the amount payable.

Progress payments shall not constitute acceptance of the work.

**9.7 PAYMENT FOR MATERIALS DELIVERED TO PROJECT:**

Payment will not be made for materials delivered to, or stockpiled on, the project and not yet incorporated in the work in their final position, except as specified hereinafter.

Partial payments may be made upon written request by the Contractor on specific items which are to form a part of the completed work and which are stockpiled in a manner and location satisfactory to the Engineer.

Payment may be made for hay and straw, for mulch and seed, provided special precautions, approved by the Engineer, are taken to ensure proper storage.

Materials for which an allowance is requested shall be stored in an approved manner. If at any time stored materials are lost or damaged, the Contractor will be responsible for repair and replacement of such damaged materials. If payment has been made prior to such damage, the amount allowed, or a proportionate part thereof, shall be deducted from the next partial payment and withheld until satisfactory repairs or replacements have been made.

Payment made for stockpiled materials will be on the basis of the quantities placed in storage in accordance with the stipulations in these specifications.

The rate of payment will be on the basis of actual costs as evidenced by a delivery invoice or other satisfactory evidence of cost furnished by the Contractor.

A delivery invoice must be supplied for all stockpiled materials, except materials manufactured by the Contractor that will be paid for according to the percentage established in the following table.

<b>Section Reference</b>	<b>Contract Bid Item</b>	<b>Type of Material and Payment Unit</b>	<b>Rate of Pay (Percent) Contract Unit Price</b>
260	Varies	Gravel, ton	60 percent
320	Asphalt Concrete	Gravel, ton	40 percent
380	Portland Cement Concrete Pavement	Coarse Aggregate, ton Fine Aggregate, ton	60 percent 30 percent

The Contractor shall furnish paid invoices for all stored manufactured or fabricated materials that have not been incorporated into the permanent work within 60 days from the date payment was requested. The paid invoice shall include a notarized statement from the supplier or fabricator certifying that payment has been received. In the event a paid invoice is not received, the quantity of any previously allowed material remaining in storage will be deducted from the next progress estimate, and further allowance will not be made until the material is incorporated into the work.

#### **9.8. FINAL PAYMENT:**

When the project has received final acceptance as provided in Section 5.16, the Engineer will prepare the final estimate of the quantities of the various classes of work performed. After the Engineer determines the final estimate, the Contractor will be paid the entire sum found to be due after deducting previous payments, and amounts to be retained or deducted under the provisions of the contract. Prior partial estimates and payments shall be subject to correction in the final payment.

Interest will be added to payments in excess of \$2,000 which are due the Contractor and remain unpaid 30 days after completion of the work and receipt of all required contract project documents. Interest will accrue at the legal rate set in accordance with SDCL 5-18B11 for the time period after the noted 30 days until final payment is made.

**9.9 MOBILIZATION:**

This item shall consist of preparatory and cleanup work and operations, including, but not limited to, the necessary movement of personnel, equipment, and incidentals to and from the project site; for the establishment and removal of offices, buildings, and other facilities necessary for work on the project; and for work and operations which must be performed, for cost incurred before starting work, and after completion of work on the various contract times on the project site.

When an item for mobilization is included in the proposal, payment will be made at the contract lump sum price, and be considered full compensation for costs incidental thereto. Based on the lump sum contract price for mobilization, partial payments therefore will be made on the basis of the following schedule:

**Payment of Mobilization**

<b>Minimum Amount of Contract Work Complete</b>	<b>Amount of Mobilization to be Paid</b>
Contract Execution *Payment shall not exceed 25 percent of the total contract amount for mobilization.	*Contract amount, up to and including, \$500,000—1.0 percent of the contract amount.
	*Contract amount in excess of \$500,000—\$5,000 plus 0.60 percent of amount in excess of \$500,000.
5 percent	25 percent
10 percent	50 percent
25 percent	60 percent
50 percent	90 percent
Substantial Completion	100 percent

In the event that mobilization exceeds 15 percent of the sum of all items, excluding the bid price of said item, the City reserves the right to pay the Contractor any remaining amount in excess of 15 percent when the project is substantially completed.

When an item for “mobilization” is not included in the proposal, this work shall be considered as incidental to the various contract items.

**9.10 FREIGHT RATES:**

Bidders shall fully inform themselves as to the source of supply of acceptable materials needed for the performance of the work and as to carrier rates and other transportation costs and facilities for these materials before submitting proposals.

Changes in carrier rates or in the cost of other transportation facilities used for materials during the life of the contract shall not constitute cause for a claim for additional compensation.

**9.11 INTEREST ON PAYMENTS:**

Interest will be paid and applied in accordance with state laws.

**9.12 UNEMPLOYMENT COMPENSATION:**

In accordance with SDCL 5-18B-18, all Contractors for public improvements shall furnish the City prior to final payment, certification from the South Dakota Department of Labor indicating payment of unemployment compensation contributions and interest due in the performance of the contract. The Contractor may obtain certification by contacting the address below:

South Dakota Department of Labor, Unemployment Insurance Division  
P.O. Box 4730  
Aberdeen, SD 57402-4730  
Phone: 605-626-2312