

## SECTION 7

### GENERAL CONDITIONS

#### 7.1 DEFINITIONS AND TERMS

That whenever any word or expression defined herein, or pronoun used in its stead, occurs in these specifications or other Contract documents, it shall have and is mutually understood to have the meaning herein given:

- A. "Addendum" or "Addenda" shall mean a change or changes to the bid proposal documents issued by the City of Rapid City prior to the time of opening of the proposals.
- B. "Advertisement" shall mean the public announcement inviting bids for work to be performed or materials to be provided.
- C. "Award" shall mean the acceptance of a bid proposal by the City of Rapid City Council.
- D. "Bidder" shall mean the individual, partnership, firm, corporation, or an acceptable combination thereof, such as a joint venture that is submitting a proposal.
- E. "Bid Proposal", "Bid" or "Proposal" shall mean the written offer of a bidder, on the prescribed form, to perform the work at the prices quoted.
- F. "Bid Schedule" shall mean the list of bid items, together with estimated quantities appearing in the proposal form.
- G. "Calendar Day(s)," unless herein otherwise expressly defined, shall mean a day or days of twenty-four hours each, beginning and ending at midnight.
- H. "Change Order" shall mean a written order issued by the Engineer to 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.
- I. "Contract" or "Contract Documents" shall mean the written agreement between the Owner and the Contractor setting forth the obligations of the parties for the performance of the prescribed work.

The Contract shall include: Notice for Bids; Instructions to Bidders; Bid Proposal; Contract Form and Contract Bond; Notices; Insurance; Performance Bond; Special Conditions; General Conditions; Special Provisions; Standard Specifications;

Detailed Specifications; Standard Drawings; Detailed Plans; Plans Drawings; Addendum; Change Orders; and agreements that are required to complete construction of the work, all of which constitute one instrument.

Detailed plans and/or specifications that are furnished by the Contractor to clarify or define the Owners contract must be approved by the Engineer prior to use. Upon approval, said plans and/or specifications shall be considered a part of this Contract.

- J. "Contract Item", "Bid Item" or "Pay Item" shall mean a specific unit of work for which a price is provide in the Contract.
- K. "Contract Performance Bond" shall mean the security executed by the Contractor and furnished to the Owner to guarantee performance of the work in accordance with the Contract.
- L. "Contract Time" or "Contract Days" shall mean the number of working days allowed for performance and completion of the Contract or date work is to be completed, as stated in the Proposal and Contract.
- M. "Contractor", "Prime Contractor" or the words "Party of the Second Part" shall mean the individual, partnership, firm, corporation, or joint venture contracting with the City of Rapid City for performance of the prescribed work covered by the Contract and his duly authorized agents or legal representatives.
- N. "Contract Date" or words equivalent thereto, shall mean the date upon which this Contract, executed by the Contractor, is signed by the Owner.
- O. "Delay" shall mean an increase in the time required for completion of the contract work beyond that originally contemplated by the parties at the time the Contract was signed.
- P. "Excusable Delay" shall mean unforeseeable delay, which excuses the Contractor's obligation to complete the work on time by extending performance time for contractually specified reasons.
- Q. "Inexcusable Delay" shall mean delay for which the Contractor is not entitled to a time extension or monetary compensation and may even be liable in damages to the Owner.
- R. "Compensable Delay" shall mean delay for which the Owner is liable in damages to the Contractor. Compensable delay is a subcategory of excusable delay, since all compensable delays will also be excusable delays. However, not all excusable delay is compensable.
- S. "Engineer" shall mean the Director of Public Works, who has been employed by the Owner for this work, acting directly or through his duly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them, responsible for engineering inspection of the Contract work.

- T. "Equipment" shall mean any machinery, tools, implements or apparatus together with supplies for maintenance and upkeep, necessary for the construction and completion of the Contract work.
- U. "Extra Work" shall mean an item of work not provided for in the Contract as awarded, but found by the Engineer to be essential to the satisfactory completion of the Contract within its intended scope.
- V. "Holiday" shall mean the first day of January, commonly known as New Year's Day; the Friday immediately preceding Easter, commonly known as Good Friday; the last Monday in May, commonly known as Memorial Day; the fourth day of July, commonly known as Independence Day; the first Monday in September, commonly known as Labor Day; the eleventh day of November, commonly known as Veteran's Day; the fourth Thursday in November, commonly known as Thanksgiving Day; the Friday immediately following Thanksgiving Day; the twenty-fifth of December, commonly known as Christmas Day; and any other day declared by the City to be a holiday.

If the day of observance of the foregoing holidays is changed by enacted laws of the State of South Dakota, such day will be the day of observance of such holiday. Whenever any of the foregoing holidays fall on Sunday, the Monday immediately following shall also be observed as a holiday. Whenever any of the foregoing holidays fall on Saturday, the Friday immediately preceding shall also be observed as a holiday. Saturdays and Sundays will be considered the same as Holidays.

- W. "Incidental Items" or "Incidental Work" shall mean items of work, as shown on the plans and/or in the specifications, for which there are no bid items in the Bidder's Proposal. If no bid item for "Incidental Work" is included in the bid proposal, the cost of these items shall be included in the contract bid price for related work items.

If a bid item for "Incidental Work" is included in the bid proposal, such work shall be included as a part of this work item.

- X. "Inspector" shall mean the engineer's authorized representative or representatives assigned to make detailed inspections of contract performance, limited to the particular duties entrusted to them.
- Z. "Owner", "City", "City of Rapid City", or "Party of the First Part" shall mean the City of Rapid City acting through its authorized representatives.
- AA. "Materials" shall mean substances specified for use in the construction of the project.
- AB. "Notice to Proceed" shall mean the written authorization to begin work on the project.
- AC. The "Plans" shall mean the Contract drawings which show the location, character, and dimensions of the prescribed work, including layouts, profiles, cross sections, and all drawings submitted by the successful bidder with his Proposal and by the

Contractor to the Owner, if and when approved by the Engineer; and all drawings submitted by the Owner to the Contractor during the progress of the work, as provided for herein.

- AD. "Project" shall mean the specific section of street, road, property together with all appurtenances and construction to be performed under the Contract.
- AE. "Provide" shall be interpreted to mean both furnish and install.
- AF. "Special Provisions" shall mean additions and revisions to the standard and supplemental specifications applicable to the individual project.
- AG. "Specialty Items" shall mean those items of work specified in the proposal requiring special equipment, materials, or skills not normally required in typical construction work.
- AH. "Specifications" is a general term applied to all directions, provisions, and requirements pertaining to performance of the work.
- AI. "Standard Specifications" is the book of specifications approved by the Owner for general applications and repetitive use.
- AJ. "Subcontractor" shall mean an individual, partnership, firm, corporation, or joint venture, to which the Contractor sublets a portion of the Contract.
- AK. "Submittals" shall include all drawings, diagrams, descriptive literature, illustrations, instructions, schedules, safety plans, operating plans, performance and test data, product data sheets, material safety data sheets, and similar materials prepared by the Contractor or a supplier to illustrate material or equipment or some portion of the work.
- AL. "Substantial Completion" shall mean: a) the Contractor is prosecuting the remaining work in a manner satisfactory to the Engineer; b) the project is or could be used for the purposes intended; and c) pedestrian or vehicular traffic will not be inconvenienced by prosecution of the remaining work.
- AM. "Superintendent" shall mean the Contractor's authorized representative in responsible charge of all of the Contract work.
- AN. "Supplemental Specifications" shall mean approved additions and revisions to the Standard Specifications.
- AO. "Work" shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the project.
- AP. "Working Day" shall mean a calendar day, other than holidays or Sundays, except as permitted in writing by the Engineer, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed for

at least five (5) hours, with the normal working force engaged in performing the controlling item or items of work which would be in progress at that time.

- AQ. "Written Notice" shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.

That whenever in these Contract documents the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used, it shall be understood that the order, direction, requirements, permission, or allowance of the Owner and the Engineer is intended.

Similarly, the words "approve," "reasonable," "suitable," or "acceptable," otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the Owner and Engineer.

## 7.2 ABBREVIATIONS

Whenever 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 advertisement 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 Association
FAA	Federal Aviation Administration
FSS	Federal Specifications and Standards
GSA	General Services Administration
ICC	Interstate Commerce Commission
IPECA	Insulated Power Cable Engineer's Association
ITE	Institute of Transportation Engineers
MUTCD	Manual of Uniform Traffic Control Devices

NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
RETMA	Radio Electronic Television Manufacturer's Association
SAE	Society of Automotive Engineers
SSPC	Steel Structures Painting Council
UL	Underwriters Laboratory

### **7.3 SUBHEADINGS AND TITLES**

The titles or subheadings used in this contract and on the contract plans and drawings and in the specifications, are understood to be for convenience of reference only, and shall not be taken or considered as being a part thereof, or as having any bearing on the interpretation thereof.

### **7.4 NATURE AND LOCATION OF WORK**

It is understood and agreed that the Contractor has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character of equipment and facilities needed preliminary to and during the execution of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contract.

### **7.5 VERBAL STATEMENTS NOT BINDING**

It is understood and agreed that the written terms and provisions of the Contract Documents shall supersede all verbal statements of the Engineer or other representatives of the City, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever the written Contract.

### **7.6 SCOPE, NATURE, AND INTENT OF CONTRACT PLANS AND SPECIFICATIONS**

The Contractor shall, in good and first-class workmanlike manner, and at his own cost and expense, furnish all of the labor, tools, materials, and equipment necessary to complete, ready for use, all of the work as designated and as described by the Contract Documents on file with the Finance Officer of the City of Rapid City, Rapid City, South Dakota.

The said specifications, plans, and contract are intended to supplement, but not necessarily duplicate, each other and together constitute one complete set, so that any work covered in the one and not in the other shall be executed just as if it had been set forth in the Contract, in order that the work shall be completed according to the complete design or designs as decided and determined by the Engineer. It is understood and

agreed that the work shall be performed and completed according to the true spirit, meaning, and intent, of the contract and specifications.

The Contractor agrees that in undertaking to complete the work within the time herein fixed, he has taken into consideration and made allowances for all of the ordinary delays and hindrances incidental to such work, whether or not growing out of delays in securing materials or equipment. Compensation for delays due to no fault of the Contractor may be negotiated.

The Contractor also agrees that all time limits stated in the Contract Documents are of the essence of the Contract.

All the work shall be done under the direct observation of the Engineer and to the entire satisfaction of the Engineer and the Owner and in accordance with the laws of the State of South Dakota and the Ordinances and Codes of the City of Rapid City.

## **7.7 DUTIES AND POWERS OF INSPECTORS**

Properly authorized inspectors shall be considered to be the representatives of the Engineer, limited to the duties and powers entrusted to him. It shall be their duty to inspect the materials and workmanship of those portions of the work to which they are assigned, either individually or collectively, under instructions of the Engineer and to report any and all deviations from the plans, specifications, and other contract provisions which may come to their notice. Any Inspector shall have the right to order the work entrusted to his supervision stopped if in his opinion such action becomes necessary, until the Engineer is notified and he has determined and ordered that the work shall proceed in due fulfillment of all contract requirements. The Engineer and his representatives shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

## **7.8 SEPARATE CONTRACTS**

The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. His failure so to inspect and report shall constitute an acceptance of the other contractors work as fit and proper for the reception of his work, except as to defects which may develop in the other contractors work after the execution of his work.

To insure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the Drawings.

## **7.9 CONTRACT EXECUTION**

The Bidder agrees that he will execute the contract in accordance with the proposal as accepted and secure and furnish the required bonds and insurance within ten (10) calendar days from the date of mailing of said notice of bid award to him at his address as given on the proposal or within such additional time as may be allowed by the Engineer; and that, upon his failure or refusal to do so within said time, the certified or cashier's check or bidder's bond accompanying this bid and the money payable thereon shall be forfeited to and become the property of the City of Rapid City as liquidated damages for such failure or refusal.

## **7.10 COPIES OF CONTRACT**

Not less than four (4) copies (and as many more as may be required) of the bound volumes of the proposal, contract, and specifications shall be prepared, each shall contain an exact copy of the Contract signed by both parties thereto. Two (2) executed copies shall be filed with the City. Additional copies shall be filed where and as may be required.

## **7.11 RESPONSIBILITY OF CONTRACTOR**

**General Responsibility:** The Contractor shall furnish all transportation, ways, works, machinery, and plant, and all suitable appliances required for the safe, proper, and lawful construction, maintenance, and use thereof. The Contractor shall be fully responsible for the materials and equipment used for the work and for safeguarding the work against damage or destruction until its final acceptance by the Engineer. The Contractor agrees to make no claims for damage to the work prior to final acceptance and will make no claims for damage to the materials except through negligence or willful act of the Owner.

Before the completion and acceptance of this Contract shall be made good by him, he shall be solely answerable for all damage to the Owner or the property of the Owner; to other Contractors, or other employees of the Owner; to the neighboring premises or to any private or personal property due to improper, illegal, or negligent conduct of himself or his subcontractors; employees or agents in and about said work or in the execution of the work covered by this Contract or any extra work undertaken herein provided; or to any defect in, or the improper use of, any scaffolding, shoring, apparatus, ways, works, machinery or plant. He shall indemnify and save harmless the Owner and its officers and agents from all claims relating to labor, materials, and methods used in executing the work.



**7.12 PERSONS IN RESPONSIBLE CHARGE**

The Contractor shall have on the site at all times a superintendent or a person in his employ who shall be in responsible charge of all work. The Contractor shall, in writing, give the Engineer the name of the person in responsible charge prior to beginning any work. Changes of persons in responsible charge during the course of performing the work shall be submitted, in writing, to the Engineer prior to instituting the change.

**7.13 ORDER OF COMPLETION OF WORK**

The Contractor shall, within ten (10) days after being instructed to do so in a written notice from the Engineer, commence the work to be done under this contract; and the rate of progress shall be such that work shall have been completed in accordance with the terms of this Contract, on or before the date of completion named in the proposal hereof.

**7.14 CONTRACTOR TO CHECK SPECIFICATIONS AND SCHEDULE**

The Contractor shall check all specifications, quantities, and schedules given to him by the Engineer and shall, upon discovery, notify the Engineer in writing of any discrepancy which he may discover between the plans and specifications or between either plans and specifications and physical site conditions; or if he observes site conditions not usually encountered on this type of work; or if he believes the plans and specifications require work which would violate laws, ordinances, or codes. Failure to follow this procedure shall preclude the Contractor from making any claim for damages resulting from the alleged discrepancy.

Should anything be omitted from the specifications, plans, and/or contract which is necessary to the clear understanding of the work, or should it appear various instructions are in conflict, then the Contractor shall secure written instructions from the Engineer before proceeding with the construction affected by such omissions or discrepancies. Failure to request written instructions shall constitute a waiver to any and all claims associated with the omission or conflict.

The Contractor will not be allowed to take advantage of any error or omission in the plans, specifications or contract documents, as full written instructions will be furnished by the Engineer, should such error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

**7.15 CALCULATED DIMENSIONS TO GOVERN**

In case of discrepancy, calculated dimensions will govern over scaled dimensions.

**7.16 DRAWINGS FURNISHED BY CONTRACTOR**

The Contractor shall supply such working specifications and drawings of devices, castings and composite materials to be furnished under this Contract as are called for herein or are required by the Engineer to make clear the details of equipment and of devices.

**7.17 PATENTS**

It is further agreed that all royalties for patents or patent infringement claims, whether such patents are for processes or devices, that might be involved in the construction or use of the work, shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and shall be liable for any damages or claims for patent infringements; and the Contractor shall, at his own expense, defend any and all suits or proceedings that might be instituted at any time against the Owner for infringement or alleged infringement of any patent or patents involved in the work; and in case of an award of damages, the said Contractor shall pay such award; final payment to the Contractor by the Owner will not be made while any such suits or claims remain unsettled.

**7.18 INDEMNITY**

The Contractor shall indemnify and save harmless the Owner from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recovered against him, by reason of any act or omission of the said Contractor, his agents or employees, in the execution of the work or in the guarding of it and this shall include acts or omission of subcontractor.

The Contractor shall, and is hereby authorized to, maintain any part for such insurance, issued in the name of the Owner, as will protect the Owner from his contingent liability under this Contract, and the Owners right to enforce against the Contractor any provision of this Section shall be contingent upon the full compliance by the Owner with the terms of applicable insurance policy or policies, a copy of which shall be deposited with the Owner.

**7.19 INSURANCE**

The Contractor shall secure policies of insurance in amounts, form and companies satisfactory to the Owner, and as specified in Forms A & B of the Contract.

**7.20 GUARANTEES**

The Contractor and any sureties under the Performance Bond guarantee to complete the project as specified and agree that loss as a result of any occurrence including acts of God, shall not relieve them of their obligation.

**7.21 CONTRACTOR LIABILITY INSURANCE**

The Contractor shall maintain insurance as will protect him from claims under Workmen's compensation acts and from any other claims for damages for personal injury, including death, which may arise from or by any subcontractor or anyone directly or indirectly employed by either of them.

**7.22 PERFORMANCE BOND**

The surety bond executed by the Contractor, issued to the Owner, shall be a guarantee:

- A. For the faithful performance and completion of the work in strict accordance with the terms of the contract, specifications, and detailed plans;
- B. For the payment to the Owner of all sums due or which may become due by the terms of the contract; as well as by reason of any violation thereof by the Contractor;
- C. For the payment of all bills, including the hire, rental or lease of equipment or machinery, and the operators thereof, used on the work, and for all materials, lubricants, oils and gasoline used in or consumed in the construction of such work and for all labor performed in such work whether by sub-contract or otherwise;
- D. The payment of any and all judgments and costs of suits and actions brought against the Owner or officials thereof, for any cause whatsoever, arising from or on account of any injuries or damages to life or property suffered or sustained by any person, firm or corporation, caused by the Contractor, his or its agents, servants or employees in the construction of said work, or by or in consequence of any negligence, carelessness or misconduct in guarding or protecting the same, or any act or omission of the said Contractor his agents, servants, employees;
- E. And for the protection of the Owner against all suits and claims for infringements or alleged infringements of patent rights processes.

This section shall in no way be construed as limiting the obligation under the Performance Bond actually furnished, but may be an addition thereto.

The Owner agrees to mail a notice to the Contractor, calling his attention to any failure to comply with the requirements of the bond, not more than ten (10) days before notifying his bondsmen of such failure to comply with the terms of said bond.

### **7.23 UNEMPLOYMENT COMPENSATION**

The Contractor to whom the Contract is awarded, will pay the Department of Manpower Affairs of South Dakota, all contributions and interest due under the Unemployment Compensation Law of South Dakota. Further, it is required that the Contractor furnish a certificate, prior to final payment, from the Department of Manpower Affairs that all contributions and interest due to the department in performance of that Contract have been paid.

### **7.24 DISCRIMINATION**

The Contractor will not discriminate against any employee or applicant for employment because of race, sex, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, sex, creed, color, or national origin. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the City, that all qualified applicants will receive consideration for employment without regard to race, sex, creed, color, or national origin.

The Contractor will send, to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, of the rules, regulations, and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive order No. 11246 of September 24, 1965, and by the rules, regulations, and order of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The Contractor will include the provisions of Section 7.21 in every subcontract or purchase order unless exemption by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the Contractor becomes involved, in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States and the City to enter into such litigation to protect the interest of the United States and the City.

## **7.25 LABOR AND DISMISSAL OF EMPLOYEES**

The Contractor shall employ only persons who are competent and skillful in their respective lines of work, and local labor shall be given preference. Whenever the Engineer shall notify the Contractor that any person on the work is, in his opinion, incompetent, unfaithful, disorderly or under the influence of intoxicating substances, or refuses to carry out the provisions of this contract or uses threatening or abusive language to any persons, shall be immediately discharged from the work and shall not be re-employed thereon except with the consent of the Engineer.

## **7.26 LAWS AND ORDINANCE**

The Contractor shall keep himself fully informed of all existing and current regulations of the Owner, and County, State, and National Laws which in any way limit or control the actions or operations of those engaged upon the work, or affecting the materials supplied to or by them. He shall at all times observe and comply with, all ordinances, laws, rules and regulations and shall protect and indemnify the Owner and the Owner's officers and agents against any claims or liability arising from or based on any violation of the same. The Contractor shall give all notices and comply with all laws, ordinances,

rules, and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the Drawings and Specifications are at variance therewith, he shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the Engineer, he shall bear all costs arising therefrom. Such performance shall constitute a waiver of any and all claims associated with the work.

## **7.27 PERMITS AND LICENSES**

Unless otherwise specified, permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor. Permits, licenses, and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified.

## **7.28 DIRT/DUST CONTROL**

All activities associated with this contract shall conform to Pennington County Ordinance #12, "Fugitive Dust Regulation." The Contractor shall obtain a dust control permit from the County Planning Office and furnish a copy to the Owner before beginning work on the project.

The Contractor shall make every reasonable effort to minimize fugitive dirt or dust as a result of construction activities. The Engineer may require the Contractor to water or take other actions necessary to prevent blowing dirt and/or dust and other nuisance conditions, at no additional cost to the Owner.

Upon substantial completion of construction at a given site or at any time prior to final project acceptance as directed by the Engineer, the Contractor shall clean up the project area(s) and remove all dirt and debris from the street and sidewalk surfaces to the satisfaction of the Engineer. In general, removal of the dirt and debris shall be conducted in such a way and/or at such a time as to minimize nuisance conditions of dirt and dust in the air, on vehicles, sidewalks, and buildings.

Specifically, the streets shall be swept with an approved, enclosed mechanical or vacuum-type sweeper, which picks up the dirt and debris and stores it for hauling and disposal off-site. The Contractor shall utilize a private sweeper whenever possible. However, he may request that the City Street Department do the sweeping if a private sweeper is not available when required. When the Contractor elects to utilize the City sweeper, he shall give the Engineer at least 72 hours' notice prior to the time the sweeper is desired. If the City sweeper is utilized, the City Street Department will then bill the Contractor for the use of the sweeper at the current hourly rate for sweeper and operator. If, in the opinion of the Engineer, the Contractor fails to make reasonable effort to minimize fugitive dust as a result of his construction activities, or refuses to take action when requested by the Engineer, the Engineer may elect to schedule the City sweeper

to provide cleanup. The City street Department will bill the Contractor at one and one-half times (1 1/2) the current hourly rate for the sweeper and operator.

## **7.29 CLAIMS AND DAMAGES**

Any claim for damage arising under this contract shall be made in writing to the party liable within ten (10) calendar days of the first observance of such damage, except as expressly stipulated otherwise, and shall be adjusted by agreement or by arbitration. Failure to comply with the notice requirement will result in denial of the claim.

In general, the Contractor may not recover for claims, which did not impact the critical path of the project.

The Contractor shall document his claim(s) in the following manner:

- A. Provide an introduction and summary.
- B. Provide a listing and explanation of subsurface information available in the bidding documents and/or through a reasonable site investigation.
- C. Provide a report of the Contractor's site investigation.
- D. Explain the conditions actually encountered.
- E. Discuss the difference between actually encountered and anticipated conditions with emphasis on the impact of such things as delay, interference, disruption, changes in construction methods, and additional direct labor and equipment requirements.
- F. Summarize the applicable laws and/or contract clauses.
- G. Set forth the time extension claim with rational, detailed calculations.
- H. Set forth the cost claim broken down to the smallest elements possible.

## **7.30 LIENS**

Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all labor and materials for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Engineer, to indemnify the Owner against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

**7.31 USE TAX LIABILITY**

The Contractor shall be liable to pay the use tax on tangible personal property that is supplied by the City to the Contractor for performance of the Contractor. The value of said personal property will be as indicated in Section 2.20 of the Contract. The Contractor shall be liable to pay all Federal, State, County, or local taxes required for labor and/or materials included in this Contract.

**7.32 WORK MODIFICATIONS**

The Owner, without invalidating the Contract, may order extra work or make changes by altering, adding to, or deducting from the work, the Contract Sum being adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

In giving instructions, the Engineer shall have authority to verbally make minor changes in the work; but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Engineer, and no claim for an addition to the Contract Sum shall be valid unless so ordered and approved by the Council.

The value of any such extra work or change shall be determined in one or more of the following ways:

- (a) By estimate and acceptance in a lump sum.
- (b) By unit prices named in the Contract or subsequently agreed upon.
- (c) By cost and percentage or by cost and a fixed fee.

If none of these methods is agreed upon, the Contractor, provided he receives an order as above, shall proceed with the work. In such case and also under case (c), he shall keep and present in such form as the Engineer may direct, a correct account of the net cost of labor and materials, together with vouchers. In any case, the Engineer shall certify to the amount including reasonable allowance for overhead and profit, due to the contract, or pending final determination of value, payments on account of changes shall be made on the Engineer's Estimate. Work done on a Force Account basis shall be as follows:



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 Owner 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 one hundred percent (100%) by the City. In order that the Engineer may verify wages paid and pro-rate overtime, the Contractor shall furnish to the Engineer certified payrolls during the period force account work is in progress.

An amount equal to fifteen percent (15%) 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 workmen's 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 these costs, of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and Social Security tax, the Contractor may elect to receive an amount equal to twenty-five percent (25%) of the actual labor costs (excluding the fifteen percent [15%] 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 delivered onto the worksite, including transportation charges paid (exclusive of machinery rentals as hereinafter set forth), to which cost fifteen percent (15%) will be added as compensation for administrative and overhead costs.

D. Equipment

For machinery or special equipment, including fuel and lubricants, plus transportation costs, the use of which has been directed or authorized by the Engineer, the

Contractor shall be paid at an agreed upon rate; or, failing mutual agreement, in accordance with provisions and rates set forth in the current edition of the South Dakota Department of Transportation Equipment Rental Rates, for actual time such equipment is in operation on the work, except that standby costs will not be paid. Nor will additional amounts be added for administration and overhead cost.

E. Miscellaneous

Additional allowance will not be made for general superintendence, cost of maintaining home office, standby costs, 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. Certified payrolls showing worker 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; and
5. Cost of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.

Statements shall be accompanied and supported by receipted invoices for materials used and 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, then, in lieu of the invoices, 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. To the sum of items A through C, shall be added ten percent (10%) for profit.

**7.33 EXTRA WORK A PART OF CONTRACT**

If extra work orders are in accordance with the provisions of this Contract, such work shall be considered a part hereof and subject to each and all of its terms and requirements.

**7.34 UNKNOWN OR CONCEALED CONDITIONS**

Whenever, during excavating operations, the Contractor encounters a heretofore unknown underground utility or other unknown or unexpected physical condition, the existence of which could not have reasonably been foreseen or anticipated and which causes a significant delay and/or expense to the Contractor, he shall contact the Engineer, before such conditions are disturbed, for a determination as to whether compensation will be allowed.

Compensation may consist of a payment to the Contractor and/or an extension of contract time. However, no compensation will be allowed unless notice is given prior to disturbing the condition. Should the Engineer allow payment, he will pay for reasonable and justifiable costs involved in dealing with the condition as specified in Section 7.29 of these specifications.

Extra contract time shall be based on the actual time of the delay caused by encountering the condition.

**7.35 SUSPENSION AND ANNULMENT OF CONTRACT**

If the equipment, material, or work to be furnished under this contract shall be abandoned by the Contractor, or if this Contract shall be assigned or the work sublet by him, or if at any time the Engineer shall be of the opinion, and shall so certify in writing to the Owner, the performance of this Contract is unnecessarily delayed, or that the Contractor is willfully violating any of the conditions or covenants of this Contract or of the specifications, or is executing the same in bad faith or not in accordance with the terms of said Contract, or if the work be not fully completed within the time named in this Contract for its completion, or within the time to which the completion of this Contract may be extended, the Owner may notify the Contractor to discontinue all work, or any part thereof, then the Owner is hereby empowered to suspend or annul this Contract.

If this Contract be so annulled or suspended, the Contractor shall not be entitled to anything on account thereby, nor shall such annulment or suspension in any way affect the right of the owner to damages claimed by it on account of the failure of the Contractor, but such annulment must be ratified by the Owner before being of any force or effect. In the case of annulment of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of this equipment and supplies from the property of the Owner, failing which,

the Owner shall have the right to remove such equipment and supplies at the expense of the Contractor.

### **7.36 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

If the work should be stopped under an order of any court, or other public authority, for a period of three months, through no act or fault of the Contractor or of anyone employed by him, then the Contractor may, upon seven (7) days' notice in writing to the Owner and the Engineer, stop work or terminate this Contract and recover from the Owner payment for all work executed and partially executed and reasonable profit.

### **7.37 ENGINEER'S RIGHT TO STOP WORK**

Should traffic, weather, or conditions caused by the actions or inactions of the Contractor dictate, the Engineer may issue a Stop Work Order to the Contractor. Upon receiving a Stop Work Order, the Contractor shall stop working and shall backfill and compact all open holes and/or trenches, properly sign, identify, and clean up the project to the satisfaction of the Engineer. When conditions improve, the Engineer will issue a Notice to Proceed for the remainder of the project. The Contractor will then have a ten (10) day equipment-ready period before contract time resumes. Remaining work shall be completed within the contract time.

### **7.38 ARBITRATION**

#### **A. Demand for Arbitration**

Any decision of the Engineer, which is subject to arbitration shall be submitted to arbitration upon the demand of either party of the dispute.

The Contractor shall not cause a delay of the work because of the pendency of arbitration proceedings, except with the written permission of the Engineer, and then only until the arbitrators shall have an opportunity to determine whether or not the work shall continue until they decide the matters in dispute.

The demand for arbitration shall be delivered in writing to the Engineer and the adverse party, either personally or by registered mail to the last known address of each, within ten (10) days of the receipt of the Engineer's decision, and in no case after final payment has been accepted except as otherwise expressly stipulated in the Contract Documents. If the Engineer fails to make a decision within a reasonable time, a demand for arbitration may be made as if his decision had been rendered against the demanding party.

## B. Arbitrators

No one shall be nominated or act as an arbitrator who is in any way financially interested in this Contract or in the business affairs of the Owner, or the Contractor, or the Engineer, or otherwise connected with any of them. Each arbitrator shall be a person in general familiar with the work or the problem involved in the dispute submitted to arbitration.

Unless otherwise provided by controlling statutes, the parties may agree upon one arbitrator; otherwise there shall be three, one named in writing by each party to this Contract, to the other party, and the third chosen by those two arbitrators, or if they should fail to select a third within fifteen days, then he shall be appointed by the presiding officer, if a disinterested party, of the Bar Association nearest the location of the work. Should the party demanding arbitration fail to name an arbitrator within said ten days, then said presiding officer shall appoint such arbitrator within ten days, and upon his failure to do so then such arbitrator shall be appointed on the petition of the party demanding arbitration by a judge of the Federal court in the district where such arbitration is to be held.

The said presiding officer shall have the power to declare the positions of any arbitrator vacant by reason of refusal or inability to act; sickness, death, resignation, absence or neglect. Any vacancy shall be filled by the party making the original appointment, and unless so filled within five days after the same has been declared, it shall be filled by the said presiding officer. If testimony has been taken before a vacancy has been filled, the matter must be reheard unless a rehearing is waived in the submission or by the written consent of the parties.

If there be one arbitrator, his decision shall be binding. If three, the decision of any two shall be binding in respect to both the matters submitted to and the procedure followed during the arbitration. Such decision shall be a condition precedent to any right of legal action.

## C. Arbitration Procedure

The arbitrators shall deliver a written notice to each of the parties and to the Engineer, either personally or by registered mail to the last known address of each of the time and place for the beginning of the hearing of the matters submitted to them. Each party may submit to the arbitrators such evidence and argument as he may desire and the arbitrators may consider pertinent. The arbitrators shall, however, be the judges of all matters of law and fact relating to both the subject matters of and the procedure during arbitration and shall not be bound by technical rules of law or procedure. They may hear evidence in whatever form they desire. The parties may be represented before them by such person as each may select, subject to the disciplinary power of the arbitrators if such representative shall interfere with the orderly or speedy conduct of the proceeding.

Each party and the Engineer shall supply the arbitrators with such papers and information as they may demand, or with any witness whose movements are subject

to their respective control, and upon refusal or neglect to comply with such demands the arbitrators may render their decision without the evidence which might have been elicited therefrom and the absence of such evidence shall afford no grounds for challenge of the award of the party refusing or neglecting to comply with such demand.

The submission to arbitration (the statement of the matters in dispute between the parties to be passed upon by the arbitrators) shall be in writing duly acknowledged before a notary. Unless waived in writing by both parties to the arbitration, the arbitrators, before hearing testimony, shall be sworn by an officer authorized by law to administer an oath, faithfully and fairly to hear and examine the matters in controversy and to make a just award according to the best of their understanding.

The arbitrators, if they deem the case demands it, are authorized to award to the party whose contention is sustained such sums as they shall assess the costs and charges of the arbitration upon either or both parties.

The award of the Arbitrators shall be in writing and acknowledged like a deed to be recorded, and a duplicate shall be delivered personally or by registered mail, forthwith upon its rendition, to each of the parties to the controversy and to the Engineer. Judgment may be rendered upon the award by the Federal Court or the highest State Court having jurisdiction to render same.

The award of the arbitrators shall not be opened to objection on account of the form of the proceedings or the award, unless otherwise provided by the controlling statutes. In the event of such statutes providing otherwise than as previously specified herein, the method of procedure throughout and the legal effect of the award shall be wholly in accord with said statutes, it being the intention hereby to lay down a principle of action to be followed, leaving its local application to be adapted to the legal requirements of the jurisdiction having authority over the arbitration.

The Engineer shall not be deemed a party to the dispute. He is given the right to appear before the arbitrators to explain the basis of his decision and give such evidence as they may require.

### **7.39 SUGGESTIONS TO CONTRACTOR ADOPTED AT HIS OWN RISK**

Any plan or method of work suggested by the Engineer to the Contractor, not specified or required in the contract, adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor; and the Engineer and the Owner shall assume no responsibility therefore.

### **7.40 SUBLETTING OF CONTRACT**

The Contractor shall perform, with his own organization, work amounting to not less than fifty (50) percent of the original total contract price, except that any items designated by

the City as "Specialty Items" so performed may be deducted from the original contract price before computing the amount of work required to be performed by the Contractor with his own organization.

Any items that have been selected as "Specialty Items" for the contract are listed as such in the proposal.

No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the Engineer. The Contractor shall request permission, in writing, to sublet, assign or otherwise dispose of any portion of the contract and shall list the names and addresses of proposed subcontractors. The Contractor shall provide a statement that the organization(s) which will perform the work is (are) particularly experienced and equipped for such work and shall provide proof that the proposed subcontractor(s) is (are) licensed to perform the work in South Dakota. The Contractor shall give assurance that all pertinent provisions of the prime contract, including the minimum wage for labor as stated in his proposal, shall apply to all work sublet, assigned or otherwise disposed of in any way. Such assurance shall be accomplished in the manner required by the Engineer. Consent to sublet, assign or otherwise dispose of any portion of the contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the Contract.

It will not be permissible for a Subcontractor to sublet work, but any work sublet to a Subcontractor can be canceled or reassigned upon request from the prime Contractor and approval of the Engineer.

The Contractor shall accept full responsibility for actions or omissions of his subcontractors and their employees as he would if they were his own. See paragraph 7.12 of these Specifications.

If evidence and investigation establish beyond reasonable doubt that a violation of the fifty percent (50%) subcontract rule is being or has been attempted through subterfuge whereby one Contractor's equipment is directly or indirectly leased to another Contractor, or whereby a significant part of one Contractor's regular working force is placed on the payroll of another Contractor, such a conclusion shall constitute a violation of the subcontract rule. This provision shall not be construed to include in the fifty percent (50%) limitation the lease of or use of equipment of a corporation or company wholly owned by the Prime Contractor.

In the case of violation of the subcontract rule, the Rapid City Council may suspend the bidding qualifications of such Contractors for a period of up to one year.

The value of work proposed for subcontract will be determined by multiplying that portion of the original contract item quantities to be sublet by the corresponding unit price as set forth in the contract.

If any phase of work involved on a contract item is sublet, the entire contract unit cost of the item will be used for determining the value of work. Materials provided by the

Contractor for a subcontractor on a particular work item will not qualify that item as work done by the Contractor.

Work performed with equipment not owned by the Prime Contractor will be considered subcontract work unless the origin of such equipment meets one of the following conditions:

1. Equipment supplied by an established equipment dealer on a rental or rental purchase agreement.
2. An occasional piece of equipment temporarily obtained from another Contractor or from an individual or company engaged in similar work.
3. Special equipment, not normally owned for the type of work involved.
4. Trucks used to haul gravel or other materials to the project.

Equipment used by a Subcontractor, must be owned by the Subcontractor or Prime Contractor, except that equipment listed above.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by him, such subcontract shall be immediately terminated by the Contractor upon written notice from the Owner.

Nothing contained in the contract documents will create a contractual relation between the City and any subcontractor.

#### **7.41 PUBLIC SAFETY AND WORK PROTECTION**

Whenever, in the opinion of the Engineer, the Contractor has not taken sufficient precaution for the safety of public or the protection of the work to be constructed under this contract, or of adjacent structures or property which may be injured by process of construction on account of such neglect, and whenever, in the opinion of the Engineer, an emergency shall arise and immediate action shall be considered necessary in order to protect the public or private personal property interest, then, the Engineer, with or without notice to the Contractor, may provide suitable protection to the said interests by causing such work to be done and material to be furnished and placed as the Engineer may consider necessary and adequate. The cost and expense of such work and material so furnished shall be borne by the Contractor, and if the same shall not be paid on presentation of the bills therefore, then such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency work under the direction of the Engineer shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken by the Engineer.



#### **7.42 BARRICADES AND WARNING SIGNS**

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

The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the road by traffic, and at all intermediate points where the new work crosses or coincides with an existing road.

It shall be the Contractor's responsibility to clear the work area of private vehicles as necessary.

All barricades, warning signs, lights, temporary signals, and other protective devices must conform with the current Manual of Uniform Traffic Control Devices.

#### **7.43 USE OF EXPLOSIVES**

When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life or property, including new work. The Contractor shall be responsible for all damage resulting from the use of explosives and shall meet all local, State, and Federal laws and requirements pertaining to explosives as well as Title 29 and Title 30, Code of Federal Regulations, Part 1926, Occupational Safety and Health Act regulations for construction (OSHA), whichever is most restrictive, in the use, loading, transportation, and storage of explosives and blasting agents.

The Contractor shall obtain a blasting permit from the Rapid City Fire Department prior to the use of any explosives. The Fire Department may impose restrictions on the quantities, methods, and materials utilized for blasting.

The Contractor shall notify property owners and public and private utility companies having structures or facilities in proximity to the site of the work of their intention to use explosive. Such notice shall be given sufficiently in advance to enable them to protect their property from injury. In no case shall notice be given less than five (5) calendar days prior to the desired date of usage.

The Engineer may require the Contractor to monitor certain properties during actual blasting in order to determine effects of blasting. In some cases, the Engineer may require the use of a seismograph to document the forces of blasting.

It is recommended that, prior to blasting, the Contractor document the condition of structures in the vicinity of the work.

#### **7.44 PROTECTION OF UTILITIES AND PROPERTY**

The type, size, location, and number of all known underground utilities are approximate when shown on the plans. The Contractor shall be responsible for determining and verifying the existence, depth, and location of all underground utilities within the work limits.

The Contractor shall give reasonable notice to the owner or owners of steam, gas, water, sewer, and other pipe lines, or conduits, overhead and underground wire or other structures, either public or private, railroads and other owners of property, when such property is liable to injury or damage of the execution of the work, in order that the owner or owners of such utility or other property may locate, relocate, remove or protect the same.

If the Owner or owners of any private or public property liable to be affected, endangered, or damaged by the construction of this work, does not protect its or their property, then the Contractor shall do so.

The Contractor shall use every precaution on the work to prevent harm or accident to the property, passengers, employees, or patrons of utilities, either publicly or privately owned, and to any other person legitimately employed on the premises, and the Contractor shall assume all liability for damages accruing from any accident, which may be due to his carelessness, omission or neglect; he shall pursue the work under and along and near such property as may be liable to damage thereby, as rapidly as possible when once the work is begun.

The Contractor shall satisfactorily shore, support and protect any and all pipe and other structures or utilities and shall not be entitled to any damage or extra pay on account of any postponement, interference, or delay caused by any such structures being on the line of the work, whether such structures are shown on the plans or not. Contractor shall save Owner harmless from any and all liability or expense for injuries, damages, or repair to any public or private property.

#### **7.45 CONDEMNED MATERIALS AND STRUCTURES**

The Contractor, at his own expense, shall remove from the site of the work, without delay, all rejected and condemned materials or structures of any kind whether or not incorporated into the work and shall promptly remove and re-execute all condemned work and will bear the expense of making good any work destroyed or damaged by removal of defective work, and upon his failure to do so or to make satisfactory progress in so doing, within forty-eight (48) hours after the service of a written notice for the Engineer ordering such removal, the condemned materials, work, or structure may be removed by the Owner and the cost of such removal be taken out of the money that may be due or may become due the Contractor on account of or by virtue of this contract. No

such rejected or condemned material shall again be offered for use by the Contractor under this or other contract under this project.

#### **7.46 MAIL BOXES**

When necessary, mail boxes shall be removed and reset in a manner prescribed by the Postmaster of the Federal Post Office, Rapid City, South Dakota. A copy of the postal regulations can be obtained from the Postmaster.

It is expected that the Contractor shall give his full cooperation to the postal department concerning mail delivery during the construction of this project.

The owner of any structurally unsound mail box post shall furnish a new post at his expense. However, the Contractor shall not remove such a post until he has notified the project inspector.

Costs associated with this item shall be incidental to the project.

#### **7.47 PROVIDING ACCESS**

The Contractor shall conduct construction activities in such a manner as to provide continuous access to all affected properties during the duration of the project, unless the specific activity precludes continuous access. At no time shall the Contractor park equipment in front of or in any other way block a driveway or other entrance such that there is no means of ingress and/or egress to or from a property. Should such a situation occur, the Contractor shall take the necessary steps to provide immediate and safe access to or from the property.

Failure to provide access in a timely manner will cause the Owner to take the necessary action and bill the Contractor one and one-half (1 and 1/2) times the cost incurred.

#### **7.48 SATURDAY, SUNDAY, HOLIDAY, AND NIGHT WORK**

No work shall be done on Sundays and legal holidays, except such work as is necessary for the proper care and protection of work already performed, and, in any case only with the written permission of the Engineer; or, in case of emergency, which also requires the immediate notification of the Engineer. The Contractor shall request, and must receive, in writing, permission from the Engineer to enable work on Sundays and legal Holidays, except such work as noted above.

No work shall be done on Saturdays, except for emergencies, without the permission of the Engineer. The Contractor shall request permission from the Engineer to work on a given Saturday a minimum of 24 hours in advance, except such work as noted above.

No work, except for emergencies, shall be done between the hours of 9 P.M. and 6 A.M. unless the Contractor first obtains the written permission of the Engineer; such permission may be revoked at any time by the Engineer if the Contractor fails to maintain, at night, adequate force and equipment for reasonable prosecution and supervision of the work, or if Contractor's operations are unnecessarily disruptive to the public.

#### **7.49 WORK DONE WITHOUT LINES, GRADES, OR INSPECTION**

Any work done without lines or grades or without the inspection of an Inspector or other representative of the Engineer may be ordered removed and replaced at the Contractor's cost and expense. In-place testing or other verification data can be requested by the Engineer at the Contractor's expense. Disregard of this requirement shall result in a Stop Work Order being issued until the Contractor provides the Engineer with an acceptable plan of prior notification procedures.

#### **7.50 STAKING WORK**

The Engineer shall furnish all necessary labor and materials to set the necessary stakes for grade and alignment for all work, but it will be the Contractor's responsibility to preserve such stakes after they are once set by the Engineer. Stakes removed, damaged, etc. by Contractor negligence shall be replaced at Contractor expense. The Engineer may require the Contractor to replace the stakes or may elect to replace the stakes and charge the Contractor for the associated costs.

All work done under this Contract shall be done to the lines and grades shown on the plans or as staked by the Engineer. The Contractor shall keep the Engineer informed, a reasonable time in advance, nominally a period of one (1) full working day, of the times and places at which he wishes to do work, in order that lines and grades may be furnished, and necessary measurements for record and payment may be made with the minimum of inconvenience to the Engineer and of delay to the Contractor. The Contractor shall determine the meaning and intent of all stakes, measurements, and marks prior to commencing work. Contractor shall be responsible for protecting stakes from displacement.

#### **7.51 MATERIALS**

##### **A. General**

The Contractor shall furnish only new and best commercial quality material, equipment, appliances, and supplies for the work. Bid prices shall include all sales and other taxes payable on all items incorporated in the permanent work.

Anything specified by manufacturer's name or proprietary name shall be furnished exactly as called for unless followed by the words "or approved equivalent". The decision of equity, will be made by the Engineer.

#### B. Samples

When requested by the Engineer, samples or test specimens of materials to be used or offered for use in connection with this work shall be prepared at the expense of the Contractor and furnished by him in such quantities and sizes as may be required for proper examination and test, with all carriage charges prepaid and with information as to their sources. All samples shall be submitted in ample time to permit the making of proper tests, analyses, or examination before the time at which it is desired to incorporate the material into the work. The cost of making all tests, and the cost of materials used in such tests, shall be paid by the Contractor, unless otherwise specified. Tests other than those which can be made in the field by the Engineer or can be arranged to be made by him elsewhere, shall be made by a properly equipped laboratory of established reputation. Reports of all tests shall be mailed to the Owner, to the Engineer, and to the Contractor.

#### C. Warranty

The Contractor warrants to the Owner that all materials and equipment furnished and installed under this contract will be new unless otherwise specified, and shall be of good quality, free from defects, and in conformance with the plans and specifications. All materials not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### 7.52 CLEANUP AND RESTORATION

The Contractor shall not allow the site of the work to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition throughout the construction period. The Engineer shall have the right to determine what is or is not waste material or rubbish and the manner and place of disposal.

The Owner reserves the right to require the Contractor to clean up all or any portion(s) of the project at any time prior to final project acceptance.

On or before the end of contract time, the Contractor shall, at his own expense, dismantle and/or remove all temporary structures built or furnished by him and shall replace or repair all areas disturbed as a result of this project to original condition or better.

If all other work has been completed, and winter weather, availability of materials such as hot mix asphalt or sod, or other conditions prevent complete cleanup and restoration, the Contractor shall clean up the project area(s) to the satisfaction of the Engineer prior

to suspending work. After cleanup has been approved, the Engineer will issue a Stop Work Order, and contract time will stop. When conditions are once again suitable and/or materials are available, the Engineer will issue a Notice to Proceed, giving the Contractor ten (10) calendar days to resume cleanup and restoration.

All cleanup and restoration shall be completed within the remaining Contract time. If additional contract time is necessary, the Contractor shall request a time extension as set forth in these General Conditions.

If complete cleanup and restoration is not possible, for whatever reason, the Contractor will be responsible for satisfactorily maintaining all disturbed areas until such time as they are restored. Should any maintenance work be required on any portion of the project prior to issuance of the acceptance letter, the Contractor shall do so within forty-eight (48) hours of receiving notice from the Engineer. Failure to do so will cause the Owner to do the necessary work and bill the Contractor one and one-half (1 1/2) times the cost incurred.

### **7.53 TESTING OF COMPLETED WORK**

Before final acceptance, all parts of the work shall be tested and each part shall be in good condition and proper working order or shall be placed in such condition and order at the expense of the Contractor, unless otherwise specified. All tests of completed work required under this contract shall be made under the direction of the Engineer by and at the expense of the Contractor, who shall repair at his own expense all damage resulting therefrom.

### **7.54 PLACING WORK IN SERVICE**

If desired by the Owner, portions of the work, as substantially completed, may be placed in service, the Contractor to give proper access to the work for this purpose; but such use and operation shall not constitute an acceptance of the work, and the Contractor shall warrant the work as specified in Section 7.51. If such prior use increases the cost of or delays the work, the Contractor shall be entitled to such extra compensation, or extension of time, or both, as the Owner may determine.

### **7.55 COMPLETION AND ACCEPTANCE OF WORK**

The Engineer, upon completion of the contract work, shall satisfy himself by examination and test that the work has been finally and fully completed in accordance with the Specifications and Contract, and report such completion to the Owner.

**7.56 ESTIMATED QUANTITIES**

The Contractor agrees that the quantities of work as stated in the Bid Proposal or indicated on the plans are only approximate, and that during the progress of the work the Owner may find it advisable, and shall have the right to omit portions of the work and to increase or decrease the quantities, and that the Owner reserves the right to add or to take from any items as may be deemed necessary or desirable. Under no circumstances or conditions will the Contractor be paid anything on account of anticipated profits upon the work or any portion thereof covered by this contract, which is not actually performed and which has not actually entered into the construction of said improvement.

**7.57 METHOD OF MEASUREMENT**

Unless specifically stated otherwise in this Contract, no extra measurement or measurements according to local custom of any kind shall be allowed in measuring the work under this Contract, but only the length, area, solid contents, number, weight, or time in standard units, as the case may be, shall be considered. The Contractor will be required at his expense to furnish all scales and equipment to properly weigh and measure the various units.

**7.58 PAYMENT****A. General**

In consideration of the faithful performance by the Contractor and of all the conditions, provisions, and covenants of this Contract and the Specifications to the satisfaction of the Owner, the Owner shall pay and the Contractor shall receive the prices stipulated in his Bid Proposal attached hereto and made a part hereof, as full compensation for everything furnished or done by the Contractor under this Contract. The Owner also agrees to pay in addition such amounts as may be agreed upon for alteration in accordance with Section 7.32 and for extra work in accordance with Section 7.33.

Unless otherwise specified, lump sum bid items will be paid for in one lump sum following 100 percent (100%) completion and acceptance of the item by the Engineer.

**B. Mobilization**

When there is a bid item for "Mobilization" in the Bid Proposal, payment for this item will be made for preparatory work and operations performed by the Contractor, including, but not limited to those necessary for the movement of his personnel, equipment, supplies, and incidentals to the project site; for the establishment of all

offices, buildings, and other facilities necessary for work on the project; and for other work operations that must be performed, or for cost incurred before beginning work on the various items on the project site.

Cost of premiums on bonds and insurance for the contract are not to be included in mobilization. No separate measurement will be made for this item. Partial payment, when allowed, shall be made according to the following schedule:

1. Twenty-five percent (25%) of the amount bid for mobilization shall be paid when five percent (5%) of the original contract amount is paid.
2. An additional twenty-five percent (25%) of the amount bid for mobilization will be paid when ten percent (10%) of the original contract amount is paid.
3. An additional ten percent (10%) of the amount bid for mobilization will be paid when twenty-five percent (25%) of the original contract amount is paid.
4. The remaining forty percent (40%) of the amount bid for mobilization will be paid when fifty percent (50%) of the original contract amount is paid.

When no bid item for "Mobilization" is included in the Bid Proposal, such costs shall be considered incidental to the various work items. In such case, no additional payment will be made for mobilization.

## **7.59 PROJECT PAYMENT**

### **A. Partial Payment Project**

For a project specified as a Partial Payment Project in Section 2, INFORMATION AND INSTRUCTIONS TO BIDDERS, payments will be made once each month as the work progresses or as requested by the Contractor, whichever is longer. Said payments will be based upon estimates prepared by the Engineer of the value of the work performed and materials complete, in place, and for materials delivered, in accordance with the Contract.

No partial payment will be made when the total value of the work done since the last estimate amounts to less than \$2,500.00.

From the total of the amounts ascertained as payable, an amount equivalent to 12% of the amount on the Contract up to \$50,000.00; 5% of the next \$200,000.00; and 2 1/2% of the amount of the Contract in excess of \$250,000.00 will be deducted and retained by the City until after completion of the entire Contract in an acceptable manner. The balance, less all previous payment, shall be certified for payment.

When the work under Contract has been completed and accepted, and it is anticipated that preparation of the final estimate will not be completed within ninety (90) days of when the work has been substantially completed to the extent that only



minor or incidental operations remain to fully complete all of the work under the Contract. If the completion of such work is deferred or delayed in compliance with Contract provisions or, upon order of the Engineer, suspending operations by virtue of weather or climactic conditions or because of seasonal restrictions provided for in the Contract, upon written request of the Contractor and consent of the surety provider, the Engineer may prepare an estimate as figured from Contract unit prices.

Payment, either in full or partial, for materials delivered to or stockpiled on the project and not yet incorporated in the work in their final position shall be as specified in Section 2, INFORMATION AND INSTRUCTION TO BIDDERS.

Partial progress payments will be made upon written request by the Contractor on specific items, as listed herein, which are stockpiled in a manner and location satisfactory to the Engineer.

#### B. Single Payment - Assessed Projects

For a project specified as a Single Payment - Assessed Project in Section 2, INFORMATION AND INSTRUCTIONS TO BIDDERS, there will be no partial payments under the Contract, but only one final payment when the work is fully completed; accepted by the Owner; final estimate determined; assessment roll issued and approved; and the assessment bonds issued by the Owner to cover the entire cost of the project.

As soon as the work has reached a point where the Engineer can finally determine the exact cost of the construction, the Engineer will make out his final estimate and assessment roll and determine the full costs of the work and submit them for approval. After the final approval of the final estimate and assessment roll, the Owner shall, as quickly as practical, sell the special assessment bond for the work.

After the above-outlined procedures have been completed, and upon full completion of the work by the Contractor and acceptance of the work by the Engineer as filed with the Owner, the Owner shall pay to the Contractor, in cash, the full amount of his final estimate.

#### C. Single Payment - Non-Assessed Projects

For a project specified as a Single Payment - Non-Assessed Project in Section 2, INFORMATION AND INSTRUCTIONS TO BIDDERS, one (1) lump sum final payment will be made after completion of the work, acceptance by the Engineer, and formal acceptance by the Owner.

### 7.60 DEDUCTION FOR UNCORRECTED WORK

If the Engineer determines it inexpedient to correct damaged or nonconforming work, an equitable deduction from the contract price can be made upon certification of the amount by the Engineer.

## **7.61 PAYMENTS WITHHELD**

The Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any pay certificate to such extent as may be necessary to protect himself from loss on account of:

- A. Defective work not remedied.
- B. Claims or liens filed or reasonable evidence indicating probable filing of claims or liens.
- C. Failure of the Contractor to make payments properly to subcontractors or for material, labor, or equipment.
- D. A reasonable doubt that the Contract can be completed for the balance then unpaid.
- E. Damage to another Contractor, work, or property.
- F. Reasonable doubt that Contractor can complete the work within the stipulated contracted time.
- G. The cost to the Owner resulting from failure to complete the work on time.
- H. Failure to provide revised project schedules when requested by the Engineer.
- I. Failure to provide acceptable construction and labor rate schedules.
- J. Failure to provide a job superintendent who is in responsible charge of all work of the project and is on the job site when work is being performed.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

## **7.62 VALUE ENGINEERING INCENTIVE**

### **A. General**

Value Engineering Incentive applies to those cost reduction proposals initiated and developed by the Contractor for changing the drawings, designs, specifications, or other requirements of the contract. It does not apply to such proposal unless it is identified by the Contractor at the time of submission to the Owner as a Value Engineering Incentive proposal.

The cost reduction proposals contemplated are those that:

1. Would require a change order to this contract.

2. Would result in savings to the City by providing less costly items or methods than those specified in the contract without impairing any of their essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and necessary standardized features.
- B. Cost reduction proposals shall be processed in the same manner as prescribed for any proposal, which would require a change order. As a minimum, the following information shall be, submitted by the Contractor with each proposal:
1. A statement that this proposal is submitted as a Value Engineering Incentive.
  2. A description of the proposal.
  3. An itemization of the requirements of the contract, which would require a change and a recommendation of how to make each change.
  4. An estimate of the reduction in performance costs that will result from adoption of the proposal.
  5. A prediction of any effects the proposed change would have on other costs to the City.
  6. A statement of the time the change order must be issued to obtain the maximum cost reduction during the remainder of the contract and the reason for this time schedule.
  7. The dates of any previous submission of the proposals, including contract numbers and the actions of the City.
  8. A statement as to the effect the proposal would have on the time for completion of the project.
- C. The City shall not be liable for delay in acting upon a proposal submitted. The decision of the Engineer as to the acceptance of any such proposal shall be final and shall not be subject to Section (5.17). The Engineer may accept, in whole or in part, cost reduction proposals submitted by issuing a change order.

If a cost reduction proposal is accepted, an equitable price adjustment in the contract price and in other affected provisions of this contract shall be made in accordance with this Specification or other applicable provisions in this contract. The equitable adjustment shall be established by determining the effect of the proposal on the Contractor's cost of performance. When the cost of performance of this contract is decreased as a result of the change, the contract price shall be reduced by the following amount: The total estimated decrease in the Contractor's cost of performance less fifty percent (50%) of the difference between the amount of such total estimated decrease and net increase to the City which must reasonably be incurred as a result of application of the cost reduction proposal to this contract. If

the change order results in an increase in the cost of performing the contract, this Specification shall not apply, and the increase shall be determined in accordance with Section 4.

- D. The substitution of one bid item for another bid item resulting in a decrease in the contract amount will not be considered as a saving under Value Engineering Incentive. When change involves the increase of one bid item and the decrease of another bid item, the change order will be made in conformance with the applicable clauses of Section 7.
- E. The Contractor may restrict the City's right to use or disclose the information submitted with a Value Engineering proposal for other purposes. Such restrictions must be in writing and be submitted with the proposal.
- F. If the proposal is accepted, this restriction shall be void, and the City may use, duplicate, or disclose, in whole or in part, data necessary to utilize such proposal.

### **7.63 DETERMINATION AND EXTENSION OF CONTRACT TIME**

The "Contract Time," or number of days allowed for the performance and completion of the work included in the contract, will be stated in the proposal and contract.

When the contract time is on a working day basis, the contract time will begin on the date determined in the Notice to Proceed and continue at the rate of one contract day charged for each day of the normal working week, Monday through Friday, except as described herein, until the work is complete. Holidays, Saturdays, and Sundays will not be included in the count of working days, except those days the Contractor has requested and been granted permission to work. No working day shall be charged when conditions beyond the control of the Contractor preclude prosecution of the work. Working days will be charged if the Contractor permits construction operations to proceed for five (5) or more hours of the day during the normal working week, or if the Contractor has requested, and been granted, permission to work on Holidays, Saturdays, or Sundays, and if, in the opinion of the Engineer, conditions allow progress of work on items essential to the completion of the project for a period of five (5) or more hours of the day.

When the contract is on a calendar day basis, contract time shall be the time from the date determined in the Notice To Proceed to the date on which all work on the project shall be completed. Holidays, Saturdays and Sundays will be included in the count of calendar days. No calendar day shall be charged when conditions beyond the control of the contractor preclude prosecution of the work. Calendar days will be charged if the Contractor permits construction operations to proceed for five (5) or more hours of the day or if, in the opinion of the Engineer, conditions allow progress of work on items essential to the completion of the project for a period of five (5) or more hours of the day.

The Engineer will, upon written request, furnish the Contractor a statement showing the number of days charged to the contract. The Contractor will be allowed seven (7)

calendar days from receipt in which to file a written protest setting forth in what respect said statement is incorrect; otherwise, the statement shall be deemed to have been accepted by the Contractor as correct. If the Engineer and the Contractor fail to reach an agreement on any statement of working days, the Engineer shall refer the statement in question to the Director of Public Works for his review and final decision.

When the contract completion time is a fixed calendar date, it shall be the date on which all work on the project shall be substantially completed. If work is not completed by the date specified, the Engineer will keep a record of working days charged after that date and will charge the Contractor on a working day basis.

Holidays, Saturdays, and Sundays will be excluded from the count of working days unless the Contractor has been granted permission to and/or utilizes such a day for construction work for five (5) or more hours of the day or if, in the opinion of the Engineer, conditions allow progress of work on items essential to the completion of the project for a period of five (5) or more hours of the day. The Contractor shall not carry on construction operations on Sundays or holidays without written permission from the Engineer, except for purposes of making emergency repairs and providing proper protection of the work, such as curing of concrete.

Days on which the work has been suspended by an action, non-action, or an omission made by the City, but through no fault of the Contractor, and days not worked because of strikes, lockouts, unusual delays in transportation, or any condition over which the Contractor has no control, shall not be counted against the contract time.

The number of days for performance allowed in the contract as awarded is based on the original quantities as outlined in the Bidder's Proposal. If satisfactory fulfillment of the contract requires performance of extra work or work on items with an increase in quantities that will take additional time to complete, the number of days allowed for performance shall be increased in the same proportion as the cost of increased work bears to the total original contract amount. Should the Contractor feel that the extension based on a monetary basis is insufficient for the increased work involved, he may submit written information, which will justify additional time. Such information must show how the increased work delays the overall completion of the entire project. Information shall be submitted as soon as possible after the increased work has been performed. If, in the opinion of the Engineer, the information submitted justifies additional time, a Construction Change Order increasing the contract time will be prepared.

When the Contractor wishes to suspend contract time due to weather, he shall make a written request to the Engineer within ten (10) working days of the first weather day for which he desires a time suspension. Failure to comply with this notice requirement could result in denial of that request.

If the Contractor finds it impossible, for reasons beyond his control, fault, or negligence, to complete the work within the contract time as specified or as extended in accordance with the provisions of this subsection, he may, at any time, request to the Engineer for an extension of time, setting forth therein the reasons which he believes will justify the granting of his request. Such request shall be submitted within ten (10) days of the start

of each occurrence for which an extension is desired. Failure to comply with notice requirements shall constitute a waiver, and failure to file a claim for additional compensation due to the delay at the time the Contractor requests the time extension bars him from claiming additional compensation for it.

The Contractor's plea that insufficient time was specified is not a valid reason for extension of time.

If the Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, he may extend the time for completion in such amount as the conditions justify. Extension of contract time will be made when unanticipated delays (beyond the control of the Contractor) in delivery of critical materials results in a delay of the work. The Contractor shall notify the Engineer immediately when it becomes evident that there will be a delay in obtaining critical materials. The extended time for completion shall then be in force and effect the same as though it were the original time for completion.

When final acceptance has been duly made as prescribed in Section 7.55, the daily time charge will cease.

#### 7.64 LIQUIDATED DAMAGES

For each working day, as specified, that any work shall remain uncompleted after the contract time specified for the completion of the work provided for in the contract, the sum specified in the following schedule will be deducted from any money due the Contractor not as a penalty but as liquidated damages; provided, however, that due amount will be taken off any adjustment of the contract time. Liquidated damages shall be understood to be compensation to the Owner for costs incurred directly by the Owner or indirectly by the users of the facility for the delay in completion of the work. These costs include, but are not limited to, increased travel times; loss of access to homes or businesses; inconvenience from loss of sewer or water uses; fire protection, etc., beyond those circumstances anticipated for timely completion of the work.

##### SCHEDULE OF LIQUIDATED DAMAGES

ORIGINAL CONTRACT AMOUNT		AMOUNT OF LIQUIDATED DAMAGES PER WORKING DAY
From more than:	To and including:	
\$ 0	\$ 50,000	\$ 200.00
50,000	100,000	250.00
100,000	500,000	450.00
500,000	1,000,000	650.00
1,000,000	2,000,000	800.00
2,000,000	and up	1,300.00

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

The Council may waive such portion of the liquidated damages as may accrue after the work is in condition for safe and convenient use by the public.

#### **7.65 PROJECT ACCEPTANCE AND WARRANTY PERIOD**

Final acceptance of the project by the Owner will be documented by the issuance of an acceptance letter, which is issued according to the following criteria:

- 1) Construction has been substantially completed and the facilities can be put to their intended use.
- 2) All testing has been completed, and the required results have been met.
- 3) A warranty bond, or other equivalent surety, in an amount equivalent to ten percent (10%) of the total cost of the project/improvement has been provided to the City to secure the warranty for a period of two years.

The date of the acceptance letter documents the start of the two-year warranty period, during which the Contractor/Subdivider/Developer shall be notified in writing of any defects in the project and shall submit to the Public Works Dept. a construction schedule to correct the defects at their expense within ten (10) days of receipt of the notice. Failure to correct or undertake, with due diligence, to correct the deficiencies within the specified time may cause the Owner to make the necessary repairs and bill the Contractor/Subdivider/Developer one and one-half (1 1/2) times the costs incurred; providing, however, that in case of an emergency, where, in the judgment of the Owner, delay would cause serious loss or damage, repairs may be made without notice being sent to the Contractor/Subdivider/Developer, and the Contractor/Subdivider/Developer shall pay the cost thereof.

The Owner reserves the right to extend the warranty period if excessive problems are apparent during the initial two-year period.

During a period of two years after the completion of the work covered by this contract and the final acceptance in writing thereof by the Owner, the Contractor shall make all needed repairs arising out of defective workmanship or materials furnished by the Contractor; or both, which in the judgment of the Owner shall become necessary during said period. The Owner is hereby authorized to make such repairs at the Contractor's expense, if within ten days after the receipt of a written notice to the Contractor, or his agent, the said Contractor shall neglect to make, or undertake with due diligence to make, the aforesaid repairs; providing, however, that in case of an emergency, where in the judgment of the Owner, 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.

**7.66 RELEASE OF LIABILITY**

No person, firm, or corporation other than the signer of this Contract as Contractor, now has any interest hereunder, and no claims shall be valid, and neither the Owner or any employee or agent thereof, shall be liable or held to pay any money except as herein provided. The acceptance by the Contractor of the payment shall operate as, and shall be a release to the Owner and every officer and agent thereof, from all claims and liability to the Contractor for anything done or furnished for or relating to the work or for any act or neglect of the Owner or any person relating to or affecting the work.

**7.67 DETAIL DRAWINGS AND INSTRUCTIONS**

The Engineer shall furnish with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions shall be consistent with the Contract Documents.

Unless otherwise provided in the Contract Documents, the Engineer, if requested, will furnish to the Contractor, free of charge, five (5) copies of drawings and specifications necessary for the execution of the work. The Contractor shall pay the Engineer for the cost of printing any additional copies of drawings and specifications to be furnished by the Engineer and requested by the Contractor.

The Contractor shall keep one copy of all drawings and specifications on the work site, in good order, available to the Engineer and to his representatives.

The drawings, specifications, and copies thereof furnished by the Engineer are his property. They are not to be used on other work, and with the exception of the signed Contract set, are to be returned to him on request, at the completion of the work.

**7.68 WAIVER OF RIGHTS**

Neither the inspection by the Owner or Engineer or any of their employees, nor any order by the Owner for payment of money, nor any payment for, or acceptance of, the whole or any part of the equipment, material, or work by the Owner or Engineer, nor any extension of time, nor any possession taken by the Owner or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

**7.69 RAPID CITY UTILITY CONSTRUCTION CODE**



Unless otherwise specified herein, all work done by the Contractor under this contract shall meet the applicable requirements of the Rapid City Utility Construction Code. A copy of this code may be obtained at the Engineering Department, 300 6th Street, Rapid City, South Dakota, at a cost of \$5.00 per copy.

#### **7.70 PRECONSTRUCTION MEETING**

Before the Contractor begins work under a City contract and before issuance of a Notice to Proceed, the Engineer will conduct a preconstruction meeting with the Contractor to establish project schedules and administrative requirements.

At the preconstruction meeting, the Contractor shall submit an acceptable written schedule, tentatively detailing the timing and sequence of major project components and showing critical construction activities and their interdependence. The Contractor, upon signing of the contract shall be required to furnish the Engineer a tentative schedule setting forth in detail the procedure he proposes to follow and giving the dates on which he expects to start and to complete separate portions of the work. If, at any time, in the opinion of the Engineer, proper progress is not being maintained, such changes shall be made in the schedule of operations as the Engineer shall direct or approve.

In addition, the Contractor shall submit a labor rate schedule for all anticipated personnel to be utilized on the project. The rate schedule shall be valid for the duration of the contract.

Submission of acceptable construction and labor rate schedules shall be a prerequisite for processing the first pay request.

The Contractor shall submit revised construction schedules periodically as directed by the Engineer to allow for changes in scheduling or whenever the present project status of critical path work items differs from the existing project schedule by more than one week. Revised schedules shall be submitted as a prerequisite for processing the subsequent pay request.