

SELECTION

The City reserves the right to request that any respondent clarify their proposal or to supply any additional material deemed necessary to assist in the evaluation of the proposal. Costs for preparing responses to this RFP will not be paid by the City.

The City also reserves the right to cancel or reissue the RFP. The City reserves the right to negotiate the terms and conditions of all or any part of the proposals or to accept any proposal determined by the City to be in the best interest of the residents of the City of Port Huron and this project. Selection will be based on experience (previous design and construction of similar projects), play value, cost and maintenance *I* durability.

SCHEDULE

These dates are preliminary and subject to change by the City.

EVENT	DATE
Award by city	December 12, 2016
Notice to proceed (based on DEQ permit)	January 13, 2017
Shop drawing review	March 31, 2017
Construction start up (earliest on-site)	April 1, 2017 +/- weather dependent
Installation completed	May 26, 2017

Scope of Services

Design Program

The proposed splash pad location is in the North West corner of 24th Street and Cleveland with Knox Park.

The Splash Pad will have the following characteristics:

- Provide a toddler area.
- Features will be universally accessible.
- Combination of in- ground and above ground features with a mostly/preference for below ground elements.

Target water usage for system is 70 gpm maximum; use of sequenced event cycles is mandatory.

- Touch pad on/off control and variable program control *I* timer.

- 6 inch thick concrete splash pad surface, 3500 psi with 6"x6"xw2.9 welded wire fabric, monolithic pour and will include a 5' buffer perimeter beyond the spray zone within the maximum diameter indicated.
- Wet deck area will drain inwards and a sump for gravity drain winterization.

The project will include the following:

1. Multi-station interactive features, interchangeable / removable features.
2. Manifolds, drains, controllers, sensors, valves, piping, backflow and pressure reducer and electrical system necessary for fully operational system. All pressurized lines to be schedule 80 pvc, drain lines can be schedule 40 pvc. Solenoids to be bronze, nozzles to be brass.
3. Connections to utility stubs (sanitary sewer, storm sewer, water) will be brought to within 15 feet of the edge of concrete splash pad.
4. Electric connections will be part of this project and will be in the cost provided by the contractor.
5. Equipment warranty will be 15 years minimum from date of acceptance of substantial completion against corrosion and material defects. Workmanship will be warranted not less than 5 years, electrical not less than 1 year.

Contractor coordination:

Water service will be provided to the connection point as specified. The splash pad contractor will provide and install the necessary backflow and pressure reducer device as needed to provide an operational Splash Pad system. These devices are planned to be within close proximity to the splash pad and in an enclosure approved by the City. Water meter, tap fees and other utility costs beyond the connection point are not part of the splash pad contract. Static city system pressure is about 52 psi. Assume a 2" water service to be provided.

Electric service will be provided to the connection point as specified. The splash pad contractor will identify the service required. The panel is planned to be within the maintenance area of the proposed restroom building and will require coordination with the general contractor to provide an operational Splash Pad system. Electrical panel and other electrical utility costs beyond the connection point are part of the splash pad contract and will be paid for by the splash pad contractor.

Upon award the contractor will be expected to complete the following upon notice of

award: Task Items

1. Meet with the Recreation Director within 1 week of award to review schedule and identify any modifications to the design.
2. Develop revised color elevations and schematic plans in AutoCAD format within 2 weeks of notice of award including any revised costs.
3. Execute a construction agreement as prepared by the City of Port Huron (attached).

4. Prepare shop drawings and provide to City within 4 weeks of notice to proceed.

Request for Proposals

City of Port Huron: Knox Park Splash Pad Design-Build

5. Complete fabrication of splash pad features based on award..
7. Attend project pre-construction.
8. Complete site work and installation.
9. Attend progress meetings during construction.
10. Attend punch list walk through and address final items of work.
11. Conduct start up and provide O&M manual to city (1 hard copy and 1 pdf)

Submittal

Provide the following information in your submittal:

1. Color perspective and site plan schematic plan that identifies feature dimensions, spray zones, individual and overall water use (gpm).
2. Names and Contact information for companies and individuals to be included in the team.
3. Related experience within the last 5 years for projects including similar fabrication, installation and site construction.
4. References from similar projects within the last 2 years.
5. Lump sum fee and schedule of values for design, fabrication and installation of Splash Pad.
6. Narrative on design approach, comments on timeline and/or issues to be addressed or opinions on concepts to be explored.
7. Identify ability to meet project schedule and any suggested changes and rationale.
8. Include an add/ alternate cost for including color epoxy treatment to the surface of the wet area of the splash pad and associated warrantee and maintenance needs.
9. Include an add/alternate cost for including integral color into the splash pad.
10. Include description on winterization and vandal resistance aspects of features and design.

Other requirements

Proposals shall be submitted with a bid security equal to at least five percent of the bid amount (base bid amount, if base bid and alternative bid are submitted). The bid security may be a certified check, money order, or bid bond; payable to the Owner. The bid security will be returned within 60 days of the bid date, or once a contract is executed with the successful bidder, except that if a bidder's proposal is selected by the Owner and the bidder fails to enter into a contract, their bid security will be surrendered to the Owner.

Request for Proposals
City of Port Huron: Knox Park Splash Pad Design-Build

1. BID

The undersigned Bidder proposes and agrees, if this bid is accepted by the Owner, to enter into an agreement to perform all work as described or specified.

The Bidder has examined and carefully studied the proposed work. The Bidder acknowledges the following Addenda.

Addendum No.	Addendum Date
_____	_____
_____	_____

The Bidder has notified the Engineer of any conflicts, discrepancies, and ambiguities discovered and is satisfied with the written resolution thereof.

The Bidder may submit a Base Bid, an Alternative Bid, or both. The Bidder shall provide the price, the completion date, and the design,feature(s) (for the Alternative Bid).

Base Bid:

The Bidder agrees to complete the Work as provided in their bid in accordance with the Contract Documents for the following lump sum price: _____ The Bidder agrees to complete all Work and have the equipment operational by

Name of Contractor: _____

Request for Proposals
City of Port Huron: Knox Park Splash Pad Design-Build

Address: _____

Telephone No.: _____

Authorized Signature: _____

Printed Name: _____

Date: _____

2. Design

The contractor is responsible to evaluate the site conditions prior to bidding. The contractor is to identify design requirements required in preparing coordination with other contacts. The contractor shall prepare shop drawings of the proposed equipment and submit to the Engineer for review, prior to fabrication. These include:

- A. Product data, for each feature including construction details, material descriptions, dimensions and profiles, operating characteristics, electrical and water supply needs, finishes and maintenance needs.
- B. Show drawings for fabricated equipment including plans, elevations, sections, connections, materials, finishes and maintenance needs.
- C. Wiring diagram for power, signal and control diagrams including single line and ladder diagrams
- D. Products Requiring Electrical Connection: Listed and classified by Underwriters' laboratories (UL) as suitable for the purpose specified and indicated.

- E. This installation shall comply with all applicable provisions of the latest edition of the following codes:

NEC	National Electrical Code
NFPA	National Fire Protection Association
UBC	Uniform Building Code
UPC	Uniform Plumbing Code

- F. Materials furnished hereunder shall comply with the latest edition of applicable standard specifications published by the following organizations:

ASTM	American Society for Testing and Materials
ANSI	American National Standards Institute
ASME	American Society of Mechanical Engineers
ASSE	American Society of Sanitary Engineering
AWWA	American Water Works Association
CS	Commercial Standards
NEMA	National Electrical Manufacturers Association
NSF	National Sanitation Foundation

3. Installation Requirements

- A. The contractor shall comply with local health codes, construction practices and coordinate with other trades and city departments as necessary to complete the project.
- B. Manufacturer Qualifications: Company specializing in manufacturing products specified in this section with not less than five (5) years of documented experience.
- C. Installer Qualifications: Company specializing in performing the work of this section with minimum of three (3) years' experience

4. Startup

The initial operation of the splash pad shall be observed by a representative of the manufacturer, trained and experienced with the operation and maintenance of splash pad systems. The representative shall verify that the installation meets the requirements of the spray equipment, that the splash pad is operating properly, and provide a written report indicating that everything is installed and operating properly, or note any deficiencies.

Two copies of an Operating and Maintenance Manual for the splash pad shall be provided to the city.

5. General Conditions (see attached)

A. Working Hours

The Contractor's work at the project site is limited to the 7:00 A.M. to 9:00 P.M. Monday -Saturday.

B. Means and Methods

The Contractor is responsible for establishing the means and methods of completing the required work.

C. Bid bonds are the only bonds required.

The Contractor shall provide insurance per attached requirements.

D. Insurance

The Contractor shall maintain the insurance, as attached Insured.

E. Agreement

Note the attached agreement that will be executed upon award of the contract.

SECTION 00500 - AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 201_ A.D. by and between the Incorporated City of Port Huron, St. Clair County, Michigan, by its Mayor and City Manager, Pauline M. Repp and James R. Freed, respectively, the City and _____ Party of the second part hereafter called CONTRACTOR.

OWNER and CONTRACTOR, in consideration of the mutual covenants hereafter set forth, agree as follows:

WHEREAS, the City has awarded to the CONTRACTOR the Agreement for the LAKESIDE PARK SPLASH PAD DESIGN-BUILD PROJECT NO. **P17-0170** in the amount of

_____ \$ _____ Dollars in the City of Port Huron, Michigan, as per

Drawings, Plans and Specifications of such work on file in the office of the City Engineer, and City Clerk of the City of Port Huron, which are hereby declared to be a part of this Agreement, and a copy of which the CONTRACTOR acknowledges to have received.

ARTICLE 1 - WORK

- 1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. CONTRACTOR agrees to furnish all the material, labor and equipment required for the performance of the above mentioned work and in full conformity to the Drawings, Plans and Specifications thereof.

ARTICLE 2 - THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

CITY OF PORT HURON, MICHIGAN
KNOX PARK SPLASH PAD DESIGN-BUILD
PROJECT NO. **P15-0050**

ARTICLE 3 - ENGINEER

- 3.01 The City Engineer of the City of Port Huron, Michigan, is hereinafter called ENGINEER and who is to act as the Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

- 4.1 The CONTRACTOR shall complete said work, including cleanup, no **later than** May 1st, 2016 and upon failure to do so shall pay the City, liquidated damages, in the amount as determined as set forth in the General Conditions, for each day and every day that shall elapse after such date until the work is actually completed. If, however, the work is delayed by the City, the time of the delay shall be added to the time for the completion of this Agreement. It is understood between the City and CONTRACTOR that the time specified for the completion of said work is an essential condition to the fulfillment of this Agreement.
- 4.2 CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.01 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER the amount specified in the Supplementary Conditions for each day that expires after the time specified in paragraph 4.01 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or

any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER the amount listed in the Supplementary General Conditions for each day that expires after the time specified in paragraph 4.01 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 City will pay the CONTRACTOR for completion of the Work, in accordance with Contract Documents, an amount in current funds equal to the sum of the amounts determined pursuant to the amounts bid in Section 410. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of the Unit Price Work times the estimated quantity of that item as indicated in Section 410. As provided in the General Conditions, quantity of that item as indicated in the Section 410. As provided in the General Conditions, estimated quantities are not guaranteed, and determination of actual quantities and classifications are to be made by the ENGINEER as provided in the General Conditions. Unit prices have been computed as provided in the General Conditions.

ARTICLE 6 - PAYMENT PROCEDURES

6.1 Submittal and Processing of Payments

CONTRACTOR shall submit Application for Payment in accordance with the General Conditions. Application for Payment will be processed by the Engineer as provided in the General Conditions.

6.2 Retainage

Provisions set forth in Michigan Public Acts of 1980, Act Number 524, shall be adhered to by the City and CONTRACTOR for retainage.

6.3 Substantial Completion

Upon Substantial Completion, City shall pay an amount sufficient to increase total payments to CONTRACTOR to 90 percent of the Work completed, less such amounts as Engineer shall determine in accordance with the General Conditions and less 5 percent of the Engineers estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.4 Final Payment

Upon final completion and acceptance of the work in accordance with the General Conditions, City shall pay the remainder of the Contract Price as recommended by the Engineer as provided.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

7.1 The CONTRACTOR has examined the premises and site and compared the same with the Drawings and Specifications so as to satisfy CONTRACTOR as to the condition of the premises. The Drawings, Plans and Specifications are intended to describe and provide for a finished piece of work and to be cooperative. If a discrepancy occurs between any of the Contract Documents, the controlling document shall be the lowest number document in the following schedule:

1. Bulletins
2. Special Provisions
3. Supplemental Specifications
4. Detailed Plans of the Project
5. General Detail Drawings
6. Detailed Specifications
7. General Specifications
8. Standard Plans
9. Supplemental General Conditions
10. General Conditions
11. Supplemental Instructions to Bidders
12. Instructions to Bidders
13. Michigan Department of Transportation's 2012 Standard Specifications for Construction.

7.2 The ENGINEER's judgement shall be final.

7.3 The CONTRACTOR is familiar with and is satisfied as to all Federal, State and Local Ordinances, Laws and Regulations that may affect cost, progress, and performance of the Work.

7.4 CONTRACTOR has studied reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site.

- 7.5 CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
- 7.6 CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- 7.7 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- 7.8 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 7.9 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 7.10 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 7.11 CONTRACTOR has complied with EPA 40 CFR Part 32 Debarment regulations, or explained why it cannot certify the terms included in the certification.
- 7.12 Pursuant to MCL 37.1209 and MCL 37.2209, CONTRACTOR shall not discriminate against any employee or applicant for employment with respect to hire, tenure, conditions, or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, marital status, or a disability that can be reasonably accommodated. A breach of this covenant shall be regarded as a material breach of the Contract.
- 7.13 CONTRACTOR agrees to withhold City of Port Huron income tax for all employees paid for Work or services rendered under this Contract. CONTRACTOR will remit such income taxes on a timely basis to the City of Port Huron.

This agreement is consistent with the requirements set forth under the Uniform City Income Tax Ordinance, except any provisions limiting withholding requirements shall not apply to this Contract. Failure to withhold or remit shall be regarded as a breach for which the OWNER may withhold one percent of the Contract Price.

- 7.14 CONTRACTOR agrees to provide a list of subcontractor and proof of payment to subcontractors prior to final payment. Failure to comply with this provision shall be regarded as a breach for which the OWNER may withhold one percent of the Contract Price.
- 7.15 The Contractor shall not have the right to assert or receive claims for any loss of anticipated profit, consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption, attorney fees, claim preparation expenses, and the cost of litigation. The Contractor hereby expressly waives the right to assert any such claims in any proceeding or process including but not limited to litigation.

ARTICLE 8 - CONTRACT DOCUMENTS

8.1 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 00500-01 to 00500-7, inclusive)
 2. Maintenance Bond (00613-01 page)
 3. Performance Bond (00614-01 page)
 4. Labor and Material Bond (00615-01 page)
 5. General Conditions (pages 00700-01 to 00700-52, inclusive)
 6. Supplementary Conditions (00800-01 to 00800-4, inclusive)
 8. Addenda(s)
 9. Exhibits to this Agreement
 - A. Notice to Proceed
 - B. Contractor's Proposal Submittal (pages x-xx, inclusive)
 - C. Documentation submitted by the CONTRACTOR prior to Notice of Award
 10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - A. Written Amendments;
 - B. Work Change Directives;
 - C. Change Orders.
- B. The Contract Documents may be modified only by a written document signed by both parties. Any claimed modifications which are not in writing shall be unenforceable.

ARTICLE 9 - MISCELLANEOUS

9.1 Assignment of Contract

The Contractor shall not assign his Contract or any part thereof without the prior written consent of the City Engineer, and in no case shall such consent relieve the Contractor or Contractors, from the obligations herein entered into by the same or change the terms of the agreement. No assignment of this Contract shall be valid unless it shall contain a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or materials supplied for the performance of the Work or called for in said Contract in favor of all persons, firm, corporations rendering such services or supplying such materials.

No assignment by a party hereto of any rights under or interest in the Contract will be binding on another party hereto without written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.2 Successors and Assigns

The City and the CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.3 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law, Ordinance or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and the CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, the City of Port Huron officials signing below are authorized to sign this agreement as provided for in the 2011 City Charter of the City of Port Huron, Chapter 10, Section 10-1.

CITY OF PORT HURON

APPROVED AS TO SUBSTANCE:

James R. Freed, City Manager

Pauline M. Repp, Mayor

APPROVED AS TO FORM:

ATTESTED TO:

, City Attorney

Susan M. Child, City Clerk

**CERTIFIED AS TO SUFFICIENCY
OF FUNDS:**

Edward P. Brennan, Director of Finance

Dated: _____

CONTRACTOR: _____

By: _____

Its: _____

Dated: _____

NOTE: This signature sheet is for the agreement with LCOMPANY NAME_] for the LAKESIDE PARK SPLASH PAD DESIGN-BUILD

00615 - 1
P15-0050

SECTION 00619 - POWER OF ATTORNEY

Attach Power of Attorney
to this page

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P15-0050

SECTION 00623 - CERTIFICATES OF INSURANCE

Attach Certificates of Insurance
to this page

00623-1
P15-0050

SECTION 00700 - GENERAL CONDITIONS

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SECTION 00700 - GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

Addenda: Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Requirements or the Contract Documents.

Adjustment: The change to the Contract made by the City Engineer as a result of the Contractor filing a Claim.

Agreement: The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

Application

for Payment: The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

Asbestos: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

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

Bidding

Documents: The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of bids).

Bidding

Requirements: The Advertisement or Invitation to Bid, Instruction to Bidders, bid security form, if any, and the bid form with any supplements.

Bonds: Performance and payment bonds, bid bond, labor and material bond and maintenance bond and other instruments of security which are provided by a surety and are in a form which are acceptable to the City.

Change

Order: A document approved by City Council which is signed by the Contractor and the City Engineer which authorizes payment for additions, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the effective date of the Agreement.

Work Change

Directive: A document recommended by the Engineer which is signed by the Contractor which authorizes additions, deletions or revisions in the Work or an Adjustment in the Contract Price or the Contract Times, issued on or after the effective date of the Agreement.

City: The term used in these specifications shall mean the Incorporated City of Port Huron, Michigan, acting through the Mayor and City Council or their duly authorized representatives.

City Engineer: The Engineer for the City acting as the Director of Public Works.

City

Manager: Term used in these specifications shall mean the City Manager of the City of Port Huron, Michigan.

Civil Engineer

I, II or III: The Engineer representing the City who is responsible for Engineering Supervision of the construction.

Claim: A demand or assertion by Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

Contract: The entire and integrated written agreement between the City and the Contractor concerning the Work. The Contract supersedes prior negotiations, representation, or agreements whether oral or written.

Contract

Documents: The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Special Provisions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by City to Contractor are not Contract Documents.

Contract

Price: The moneys payable by the City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement.

Contract

Times: The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and/or (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

Contractor: The individual or entity with whom Owner has entered into the Agreement.

Day: The Work Day shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

Defective: The word "defective" when modifying the word "Work" refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with paragraph 14.04 or 14.05).

Drawings: That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

Effective Date

of Agreement: The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

Engineer: Unless specifically stated as City Engineer, Transportation/Engineering Manager or Civil Engineer I, II or III; Engineer refers to any of these. These terms are further defined elsewhere in this section.

Field Order: A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or Contract Times.

Force

Account: Term used to specify how a Contractor will be paid if no agreement can be reached by the Engineer on a Claim.

Furnish: The word "furnish" when used in connection with services, materials, or equipments, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

General

Requirements: Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

Hazardous Environment

Condition: The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

Hazardous

Waste: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

Install: The word "install" when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials.

Laws and

Regulations: Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and

all governmental bodies, agencies, authorities, and courts having jurisdiction.

Liens: Charges, security interests, or encumbrances upon project funds, real property, or personal property.

Milestone: A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

Notice of Award: The written notice by the City to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, City will sign and deliver the Agreement.

Notice to Proceed: A written notice given by the City to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

Owner: Shall mean the City of Port Huron.

Partial Utilization: Use by City of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

PCB's: Polychlorinated biphenyls.

Perform or Provide: The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

Petroleum: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.

Project: The total construction of which the Work to be performed under the Contract Documents may be the whole or a part as may be indicated elsewhere in the Contract Documents.

Project Manual: The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the Table(s) of Contents.

Radioactive Material: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

Resident Project Representative: The authorized representative of Engineer who may be assigned to the Site or any part thereof.

Samples: Physical examples of material, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

Shop Drawings: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

Site: Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including right-of-ways and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.

Specifications: That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor: An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

Substantial Completion: The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

Supplementary Conditions: That part of the Contract Documents which amends or supplements these General Conditions.

Supplier: A manufacturer, fabricator, supplier, distributor, material, or vendor having a direct contract with Contractor or any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

Surety: The legal entity which is bound with and for the Contractor for the performance of the Contract and for the payment of all lawful indebtedness pertaining thereto.

Transportation/Engineering

Manager: The Engineer representing the City in the absence of the City Engineer or the Civil Engineer I, II, or III.

Underground

Facilities: All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

Unit Price

Work: Work to be paid for on the basis of unit prices.

Work: The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

Written

Amendment: A written statement modifying the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Agreement and normally dealing with the non-engineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect are used or the adjectives "reasonable," or like effect are used to describe an action or determination of the Engineer as to the Work, it is intended that such action or determination will be solely to evaluate, in general the completed Work for compliance with the requirements of an information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless this is a specific statement indicating otherwise.)

The use of any such term or adjective shall not be effective to assign to the Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions set forth in the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

2.1 - Interpretation of Quantities in Bid Schedule:

The quantities appearing in the bid proposal are estimated and will be used in the comparison of proposals. Payment to the Contractor will be for the actual quantities of work performed and accepted or materials furnished according to the contract. The quantities of work and materials as provided in the contract may be increased, decreased, or deleted, in sections 103.02A, B or F of the Michigan Department of Transportation's 2012 Standard Specifications for Construction.

2.2 - Examinations of Plans, Specifications, and Site of the Work:

Prior to submitting a bid, the Bidder must:

A. Examine the proposal, plans, and the work site to understand the local conditions affecting the work and the detailed requirements of construction.

B. Upon discovery of uncertainties, inconsistencies, errors, omissions, or conflicts during the examination of the proposal, plans and work site, notify the City's representative identified in the proposal.

C. Be familiar with all requirements of federal, state, and local laws, ordinances, and permits that may directly, or indirectly, affect performance of the work.

The City considers the submission of a bid proposal as prima facie evidence that the Bidder examined the proposal, plans, and the project site, and understands the requirements of the proposal package and conditions at the project site.

The Bidder must not take advantage of errors or omissions in the proposal that could make the bid mathematically or materially unbalanced. Failure to notify the City of errors and omissions may result in the City's rejection of the bid.

2.3 - Preparation of Proposals:

The proposal shall be legibly prepared in ink or typed on the form provided. The Bidder shall complete all blanks on the Bid form.

The proposal shall be signed by an authorized representative of the Bidder and include the complete address of the Bidder.

A Bidder may alter a unit or lump sum price entered on the proposal. To make an alteration, the Bidder shall cross out the entry, and enter the new figure above or below the deleted entry. An authorized representative of the Bidder must initial on the line of the change. Any alteration and initials shall be handwritten in ink.

2.4 - Delivery of Proposal:

The proposal shall be submitted in a sealed envelope which shall clearly state the name of the bidder, address of bidder, the job the bid is for and the time and the date the bid is to be opened. The bid shall be submitted to the room called out in the advertisement prior to the time and date specified. Proposals submitted via any other method will not be accepted.

2.5 - Opening of Bids:

The bids shall be opened publicly and the total amount of each bid read aloud at the time and place specified in the advertisement. After checking all bids, the unit prices of the bidders may be made public if requested. Up to the time specified in the advertisement a bidder may request to withdraw the bid.

2.6 - Consideration of Proposals:

To determine the lowest bidder, the proposals will be compared on the basis of the sum of products or quantities and unit bid prices. In case of discrepancy between the calculated total and the total shown in the proposal, unit prices as written in the proposal shall govern and all errors found in said computations will be corrected.

The City may reject proposals, waive any irregularities and accept any proposal that it determines is in the best interest of the City regardless of whether the proposal is the lowest proposal, or proceed to do the work in any other way it determines is in the best interest of the City.

2.7 - Notice of Award:

After the Project has been awarded by Council, within 10 days the Contractor will receive a Notice of Award and copies of the Contract Documents to be executed and returned. No work can be done on site until the Contractor receives the Notice to Proceed from the City.

2.8 - Copies of Documents:

City shall furnish to the Contractor, for signature(s), bonds and insurance, three (3) copies of the Contract Books within 10 days of notice of award. These shall be returned within 28 days of the Notice of Award and must be deemed acceptable by the City before the Notice to Proceed can be issued. Four (4) copies of the Contract Books and/or Plans will be furnished at no additional cost to the contractor. Any additional copies (beyond the four (4) that are furnished) will be paid for at the cost of reproduction.

2.9 - Forfeiture:

Failure on the part of the awarded Contractor to execute the Contract forms and file satisfactory insurance and bonds and other required documents within 28 days after the Notice of Award, may result in the forfeiture of the proposal guaranty to the City. The City then reserves the right to further Award the project to an alternative bidder.

2.10 - Return of Proposal Guarantees:

Proposal guarantees, other than those provided as proposal bonds, of all Bidders except the determined lowest bidder and all potential appeal Bidders, will be returned promptly following the opening of the Proposals. The City will hold the proposal guaranty until the Contractor has been given a Notice to Proceed.

2.11 - Preconstruction Meeting:

Within Twenty (20) days after the Notice of Award, but before any Work at the site is started, a conference attended by the Contractor, Engineer and others as appropriate will be held to establish a working understanding among the parties to the Work and to discuss the schedules, procedures, lines of authority, submittals, Application for Payment and maintaining records and other pertinent information.

2.12 - Notice to Proceed:

After the City has received the proper insurance, bonds, schedules and Contract Documents and they are deemed acceptable, Documents will be executed by the City and the Contractor will be issued a Notice to Proceed. No work may start on the project until this notification has been given. Failure of the City to give Notice to Proceed before the 28th day after receiving acceptable Contract Documents shall entitle contractor to an extension of time for the completion of the Project.

2.13 - Starting the Work:

Contractor shall start to perform the Work within ten (10) days of the Notice to Proceed or a date mutually agreed upon. City and the Contractor shall agree upon this date at the pre-construction meeting. No Work shall be done at the site prior to the Contractor receiving the Notice to Proceed.

2.14 - Commencement of Contract Times:

The contract times will commence to run on the day that the Notice to Proceed is given or a date mutually agreed upon. The Notice to Proceed may be given at any time within ninety days (90) after the bid opening. After the ninety days (90) are up, the Contractor may withdraw the bid with no penalty.

ARTICLE - 3 BONDS AND INSURANCE

3.1 - Proof of Insurance Coverage:

The Contractor shall provide the City, at the time the contracts are returned for execution by the City, proof of insurance coverage on AIA Document G705 or Accord Form 25-S. The City will review all coverage's and bonds shall be with insurance companies licensed and "admitted" to do business in the State of Michigan. An additional requirement, that coverage be with carriers "acceptable to the Member," is also required. All insurance and bonds shall be with carriers which has a minimum Best's Insurance Reports rating of A+ (Superior) or A or A- ((Excellent). Upon acceptance of the proof of coverage by the City, documents will be executed by the City. Proof of coverage shall include:

- A. An original and three (3) copies of the certificates of coverage of Contractor's Workmen's Compensation.
- B. An original and three (3) copies of the certificates of coverage of Contractor's Commercial General Liability.
- C. An original and three (3) copies of the certificates of coverage of the Contractor Motor Vehicle Liability Insurance.
- D. An original and three (3) copies of the certificates of coverage of the Contractor's Excess Liability Insurance.

- E. A certified copy of the Contractor's Protective Liability Insurance policy shall be issued to the City prior to the start of the work.

3.2 - Bonds:

The Contractor shall not commence work or continue work, nor shall any subcontractor be allowed to commence or continue to work under this Contract, until all Bonds required under this paragraph have been submitted to the City and approved by the City. All Bonds shall be with sureties acceptable to the City.

- A. Performance Bond - The Contractor shall furnish a Surety Bond (form attached) in an amount at least equal to one hundred (100%) percent of the Contract Price as surety for faithful performance of this Contract.
- B. Labor and Material Bond - The Contractor shall furnish a separate Surety Bond (form attached) in an amount at least equal to one hundred (100%) percent of the Contract Price as security for the payment of all persons performing labor and furnishing materials in connection with this Contract.
- C. Maintenance Bond - The Contractor shall furnish a Surety Bond (form attached) in an amount at least equal to one hundred (100%) percent of the Contract Price as security for the maintenance and repair of any defects in material or construction that shall appear within one (1) year from the date of completion and acceptance of the work covered by this Contract.
- D. Additional or Substitute Bond - If at any time the City, for a justifiable cause, shall become dissatisfied with any Sureties pursuant to the Performance, Payment Bonds or Maintenance Bonds, the Contractor shall within five (5) days after such notice from the City to do so, substitute an acceptable bond(s) in such forms and sum and signed by such other surety as may be satisfactory to the City.

The premiums on such bond(s) shall be paid for by the Contractor. No further payments shall be deemed due nor shall be made until the new Surety or Sureties shall have furnished such an acceptable bond to the City.

3.3 - Insurance:

- A. The Contractor shall not commence work or continue work, nor shall the Contractor allow any subcontractor to commence or continue to work under this Contract, until all insurance policies or certificates of insurance required under this paragraph have been submitted to the City and approved by the City. The Contractor shall either (1) require each of his subcontractors to procure and maintain during the life of his subcontract, Statutory Workmen's Compensation Insurance, Comprehensive Automobile Liability Policy of the types and in the amounts specified for the Contractor, or (2) insure the activities of his subcontractors in his own policies. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to the City of Port Huron.
- B. Liability limits over \$1,000,000 per occurrence may be obtained by providing Excess Liability (Umbrella) coverage in addition to the General Liability Coverage.

- C. Coverage must be provided by insurance carriers licensed to do business in Michigan and rated not less than A by A.M. Best.

3.4 - Workmen's Compensation Insurance:

- A. The Contractor shall procure and maintain during the life of this contract, Workmen's Compensation Insurance, including Employer's Liability coverage in accordance with all applicable statutes of the State of Michigan.

3.5 - Commercial General Liability Insurance:

- A. The Contractor shall procure and maintain during the life of this Contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$3,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
- B. Limits of liability shall be in an amount of not less than that listed above, unless stated otherwise in Section 00800, Supplementary General Conditions of these Contract documents
- C. The Bidders's Commercial General Liability Insurance shall not contain any restrictions or endorsements amending coverage for potential liability arising out of water/sewer backup.

3.6 - Motor Vehicle Liability Insurance:

- A. The Contractor shall procure and maintain during the life of this Contract, Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages with limits of liability of not less than \$3,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.
- B. Limits of liability shall be in amount of not less than that listed above, unless stated otherwise in Section 00800, Supplementary General Conditions, of these Contract Documents.

3.7 - Owner's and Contractors Protective Liability Insurance:

- A. The Contractor shall procure and maintain during the life of this Contract, a separate Owner's & Contractor's Protective Liability Policy with limits of liability not less than \$3,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage.
- B. As an alternative, a per project aggregate on the Commercial General Liability insurance policy may be an acceptable substitute to the OCP policy.
- C. Limits of liability shall be in an amount of not less than that listed above unless stated otherwise in the Supplementary Conditions, Section 00800 of the Contract Documents.

3.8 - Additional Insured:

- A. Commercial General Liability and Vehicle Liability Insurance coverage as described above shall include an endorsement stating the following shall be Additional Insured: the City, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members including employees and volunteers, staking and resident project representatives thereof.
- B. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage be primary, contributing, or excess.

3.9 - Property Insurance:

- A. **If** project includes above-ground structure(s), or is otherwise required in the Supplementary Conditions, Section 00800 of the contract, the Contractor shall purchase and maintain property insurance upon the work and material relative to the work, wherever located or in transit, to the full insurable value thereof (or required by law). This insurance shall include the interests of the City, Contractor and subcontractors in the work, shall insure against the perils of fire, wind, storm and extended coverage and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including fees and charges of engineers, architects, attorneys and other professionals). **If** not otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain similar property insurance on portions of the work stored on and off the site or in transit when such portions of the Work are to be included in an application for payment. The policies of insurance required to be purchased shall contain a provision that the coverage afforded will not be cancelled or materially changed until at least thirty days (30) prior written notice has been given to the City.

An insurance certificate for this insurance shall be submitted at the same time as the other insurance certificates the Contractor must furnish.

3.10 - No Waiver of Claim:

Neither the acceptance of the whole or part of the work by the City or the Engineer or any of the agents of the City, nor any order, measurement or certificate by the Engineer, nor any orders by the City of its agents for the payment of money, nor any payment of money, nor any extension of time, nor any possession taken by the City or its agents, shall operate as a waiver for any portion of the contract or for any power therein reserved to the City or for any right to damages therein provided; nor shall any waiver of any breach of the contract be held to be a waiver of any other or subsequent breach.

ARTICLE 4 - INTENT OF THE CONTRACT DOCUMENTS

4.1 - Intent:

The contract documents are complementary; what is called for by one is as binding as if called for by all. The intention of the contract documents is to describe a complete project to include the contract

price or prices, the cost of all labor and materials, water, fuel, tools, plant equipment, light, power, transportation and all other expenses as may be necessary for the proper execution of the work. The work shall be executed in strict conformity with the plans and specifications and the Contractor shall do no work without proper drawings and instructions.

4.2 - Reference Standards:

In interpreting the contract documents, words describing materials or work which have a well-known technical or trade meaning, unless otherwise specifically defined in the contract documents, shall be construed in accordance with such well-known meanings recognized by engineers, architects, and the construction industry.

4.3 - Hierarchy of Documents:

If there is a discrepancy in the contract documents, the following order will prevail:

1. Bulletins/Addendums
2. Special Provisions
3. Special Conditions
4. Detailed Plans of Project
5. General Detail Drawings
6. Detailed Specifications
7. General- Specifications
8. Standard Plans
9. Supplemental General Conditions
10. General Condition
11. Supplemental Instructions to Bidders
12. Instructions to Bidders
13. Michigan Department of Transportation's 2012 Standard Specifications for Construction

4.4 - Resolving Discrepancies:

Any and all intents to file a claim(s) for extra compensation, whether on behalf of the Contractor or a Subcontractor, shall be signed and made directly by the Contractor.

Failure of the Contractor to file an intent of a claim before beginning the work the Contractor intends to base a claim on, shall constitute a waiver of the claim. To ensure the Engineer has an opportunity to maintain records, Contractor shall provide verbal notice to the Resident Project Representative of an intent to file a claim prior to starting work on the activity the Contractor intends to file a claim for. That same day the Contractor shall follow up this verbal notice in writing (fax or email is acceptable) to the Engineer. Failure of the Contractor to file an intent of a claim in writing the same day that verbal notice is provided to the Resident Project Representative, shall constitute a waiver of claim.

Failure of the Contractor to give notification will constitute a waiver of the claim for extra compensation.

Once the Contractor files a Notice of Intent to file a claim, the Contractor shall keep accurate records of all costs of the work or delay and shall afford the Engineer every facility for keeping costs of the work or delay which is the subject matter of the claim. The Contractor and the Engineer shall compare records and bring them into agreement at the end of each day.

The validity of the claim shall not be established either by the filing of a Notice of Intent to file a claim by a Contractor or the keeping of the costs records by the Engineer. A Contractor shall file a Notice of Claim with the Engineer for every claim for extra compensation or delay within the above time frames.

The Contractor may file a claim as permitted under the contract documents not later than 3 days after the work involved is completed and only concerning claims for which a written notice of intent was given. Any claim not filed in accordance with this procedure and timeline is deemed waived.

The Contractor's claim shall include all facts which give rise to the claim, a copy of the specific provisions of the contract which supports the claim and the dollar amount of the claim with an explanation as to how that figure was established. The claim shall include certification by the Contractor that the claim was made in good faith with accurate and complete supporting data and the amount requested accurately reflects the amount for which the Contractor believes the City is liable. Any claim not containing this certification by the Contractor will be deemed waived. In addition to the certification, the Contractor's claim shall contain the following information, as applicable:

1. A detailed factual statement of the claim providing necessary dates, locations, and items of work related to and included in the claim.
2. The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident.
3. Identification of documents substantiating the Contractor's claim.
4. Identification of the provisions of the contract that support the claim and a statement of the reasons these provisions support the claim.
5. A detailed compilation and a breakdown of the amount of additional compensation sought as follows:
 - a. Documented additional labor costs;
 - b. Documented additional material costs;
 - c. List of additional equipment costs, including each piece of equipment and the rental rate claimed for each; and
 - d. Other additional direct costs or damages, and associated supporting documentation.
6. For a claim related to an extension of time, a detailed compilation of the specific dates and the exact number of calendar days sought for the time extension, the basis for entitlement to time for each day, all documentation of the delay, and all impacts of the delay to the progress schedule and critical path.

Subcontractors must document and certify their claim(s) as described above. If the Contractor has a claim item related to a Subcontractor's claim, the Contractor must document and certify their claim as described above.

The Engineer will review the timely filed claims with the following procedure:

- A. Upon receipt of the detailed claim, the Civil Engineer I, II or III, the Transportation/Engineering Manager and/or the City Engineer will carefully review all available aspects of the claim, have a meeting with the Contractor, and arrive at a conclusion. The determination at this level will be made by the City Engineer. The Contractor will then be notified in writing within 45 days of the meeting what decision has been made.

If the Contractor does not agree with the City Engineer's determination, the Contractor shall, within 30 days, contact the City Engineer in writing requesting further review of the claim. In the request for further review, the Contractor shall provide a complete statement of the relief requested. The City Engineer shall review the Contractor's submittal, meet with the Contractor if necessary, and make a final determination. If a decision cannot be reached at the City Engineer's level, the City Manager or an appointed Consulting Engineer will review all documents with the Contractor and the City Manager and a determination will be made.

Any change in the claims procedures set forth in the contract documents will only be binding on the Owner if such changes are made in writing and signed by the City Engineer. The Contractor shall not assert any claims which deviate from the claims procedures set forth in the contract documents.

ARTICLE 5 - USE OF LANDS, SUBSURFACE AND PHYSICAL CONDITIONS

5.1 - Existing Improvements (Utilities):

Certain surface and subsurface structures and utilities have been shown on the plans as an aid to the Contractor, but the City does not guarantee their location or that other structures or utilities may not be encountered. It shall be the responsibility of the Contractor to make arrangements with the owner of the respective utilities for the establishment of their location, prior to beginning the construction.

The Contractor shall assume full responsibility for the protection of all utilities, water, sewer, gas, telephone, cable, or any other utility either public or private along or near the line of work and will be held responsible for any damages to such utilities arising from the Contractor's operation. If, for the Contractor's convenience, the Contractor desires that any portion of the utilities be moved to facilitate operations, the Contractor shall make all necessary arrangements with the owner of the respective utilities, and pay all costs resulting from this work.

Sanitary and water service leads are private lines. They belong to the homeowner according to the City Code of Ordinances. Therefore, if these services are marked or not marked by the MISS DIG system, and are damaged, the responsibility to fix them will be that of the Contractor. The water shut-off box locations of known service leads will be marked with a blue flag and or a blue paint circle. There is no assumption by the City as to how the water service lead gets to the water main from there. It is the Contractor's responsibility to determine this.

In cases where utilities; water, gas, telephone, cable or any other utilities either public or private are directly in the line of the structures being constructed, and the City deems it necessary that the said utility be moved, the said company or companies agents or superintendents will be notified by the Engineer to remove the same within a specified time.

The Contractor shall not interfere with the said utility or any portion thereof, until the expiration of the time specified in said notice. The Contractor will not be held responsible for any costs resulting from this work.

In all cases where there is a dispute between the Contractor and the Owner of the respective utility, as to the necessity of moving or repairing same, the Engineer shall make the final decision in the matter, which decisions shall be binding on the respective parties, and order the respective parties to proceed accordingly.

5.2 - Availability of Lands:

The City shall furnish the construction site. The City shall notify the Contractor of any encumbrances or restrictions not of general application but specifically related to use of the site with which the Contractor must comply in performing the work. The City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If the Contractor and the City are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the contract price or contract times, or both, as a result of any delay in the City furnishing the site, the Contractor may make a claim as provided in the contract documents.

5.3 Contractors Yard:

Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of material and equipment as permitted by the City Code of Ordinances. Contractor will not be allowed to use the City's private property unless given written consent by the City Engineer. No temporary fence shall be erected until a permit is given by the City's Permit Department.

5.4 - Storage on the Construction Site:

Contractor shall be required to carry on the project in such a manner as to cause the least possible obstructions to the streets. The Contractor shall confine equipment, apparatus, the storage and operations of the Contractor's workmen to limits indicated by the law or ordinances, permits or directions of the City, or by the rights of the owners of nearby private property and shall not encumber the premises with the Contractor's materials. The materials for the work may be neatly and compactly piled along the side of the boulevard as delivered as the Engineer may designate, in such manner as to cause the least inconvenience to the property owner and general public, and not to be within 25' of any fire hydrant, or prevent free access to water shut-offs. Material shall not be stored in the boulevards during a winter shut down period. Shade trees and other improvements shall be protected from damage. Any damage to lawns, public or private sidewalk approaches, or other improvements such as sprinkler systems, which may occur on account of the work, including the piling of materials therefore, shall be made good to the satisfaction of the Engineer at the Contractor's expense.

5.5 - Subsurface and Physical Conditions:

The log of borings are those reports of explorations and test of subsurface conditions at the site the Engineer has used in preparing the contract documents, and are located in the proposal. Soil notations and boring logs shown on the plans are for information only and shall not relieve the Contractor of the responsibility of investigating all local conditions before bidding.

5.6 - Differing Subsurface or Physical Conditions:

During the progress of the work, if subsurface conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

No contract adjustment will be allowed under this clause for any effects caused on unchanged work or if the Contractor has not provided the proper written notice.

Upon written notification as established in the *Resolving Discrepancies* section, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly.

If the Contractor and the City agree that compensation is due for an allowable adjustment, but no agreement is reached as to the basis for payment, the work shall proceed and be paid for under the *Force Account* section.

5.7 - Boulevards:

Contractor is responsible for fixing any sprinkler systems that is broken by the work. This work shall be incidental to the project.

A. Yard Ornaments/Brick Sidewalks etc.

If the work will require the damage or removal of existing yard ornaments, brick pavers, etc. in a homeowner's lawn, then the homeowner must be notified before the Contractor works in this area. The Contractor shall restore the yard to as good or better condition than before starting the work.

B. Trees:

Any tree that is to be removed must first be evaluated by the City's Forestry Division.

ARTICLE 6 - CONTRACTORS RESPONSIBILITIES

6.1 - Supervision:

The Contractor shall provide project management to properly oversee the work. The Contractor shall have a competent superintendent who shall have authority to act on behalf of the Contractor. The superintendent shall be responsible for handling any delays or problems with workmanship. The superintendent shall minimize construction impacts on property owners and businesses. All communications given to or received from the Superintendent shall be binding on the Contractor.

6.2 - Competence of Workers:

The Contractor shall supply sufficient labor to perform the work required by the contract. Workers shall have sufficient skills and experience to perform the work assigned to them in conformance with the contract.

6.3 - Labor:

Contractor shall provide competent, suitably qualified personnel to understand and construct the project by using the City's survey and lay out. The work will be constructed as required by the contract documents. Contractor shall at all times maintain good discipline and order at the site.

6.4 - Contractors Means and Methods:

The Contractor shall use equipment of correct size and in a mechanical condition needed to do the work of the contract. Means and methods of performing the work shall be the Contractor's judgment and responsibility.

6.5 - Performance of the Work:

No work shall be performed on Sunday, a City holiday, or after 9:00 p.m. and before 7:00 a.m. without getting written consent of the City Manager.

6.6 - Subcontracting of Contract Work:

Contract work amounting to not less than 25% of the original total contract price shall be performed by the Contractor's own organization. Subcontractors may perform any work item. The Contractor's own organization shall be construed to include only workers employed and paid directly by the Contractor and equipment owned or rented by the Contractor, with or without operators.

The Contractor shall not subcontract any portion of the contract, except furnishing of necessary material, without the written approval of the City. Approval of a subcontract shall not relieve the Contractor of the full responsibility for the performance of the contract. The Contractor shall not sell or assign any portion of the contract without the written consent of the City and the Contractors Surety.

Bonds furnished by the subcontractors shall not reduce the Contractor's bonding requirements.

No subcontract will be approved by the City unless a copy of the subcontract has been filed with the City. The Contractor remains fully responsible to the City for completion of the work according to the contract as if no portion of it had been subcontracted.

No subcontractor or supplier may maintain an action against the City for payment relating to goods or services provided in connection with the contract; any such action must be brought against the Contractor or the responsible party.

A subcontractor must perform 75% of the total value of the subcontracted work with the Subcontractor's own organization. This requirement is also applicable to and binding upon successive subcontractors.

The City Engineer may direct the immediate removal of any Subcontractor, or any Subcontractor's equipment being operated in violation of this section. Any costs or damages incurred are assumed by the Contractor.

6.7 - Permits:

Contractor shall obtain and pay for all pertinent construction permits and licenses, including but not limited to County Soil Erosion Permit, MDOT Permit, City Building Permits, Coast Guard, and Corps of Engineers Permits. The City will assist in obtaining permits and licenses when necessary.

6.8 - Laws, Regulations and City Ordinances:

The Contractor shall comply with all laws, regulations, and City Ordinances that apply to the performance of the work. The Engineer will not be responsible for monitoring the Contractors compliance with any laws, regulations, or ordinances.

6.9 - Royalties and Patents:

The Contractor shall pay for all royalties and patents and shall defend all suits or claims for infringements on any patent right for material, equipment, and/or processes used in the construction and shall save the City harmless from loss on account thereof.

6.10 - Taxes:

Contractor shall pay all applicable sales, consumer, City income and other similar taxes required to be paid in accordance with the applicable Federal, State, and Local Laws, Regulations and Ordinances of the City.

6.11 - Income Taxes:

The Contractor agrees to withhold City of Port Huron income tax for all employees paid for work or services rendered under this contract. The Contractor will remit such income taxes on a timely basis to the City of Port Huron. This agreement is consistent with the requirements set forth under the Uniform City Income Tax Ordinance, except any provisions limiting withholding requirement shall not apply to this contract.

Failure to withhold or remit shall be regarded as a breach for which the City may withhold 1% of the contract payments as liquidated damages. The Contractor further agrees to provide a list of subcontractors and proof of payment to subcontractors prior to final payment. Failure to comply with this provision shall be regarded as a breach for which the City may withhold 1% of the contract payments as liquidated damages.

6.12 - Use of Site and Other Areas:

Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the site and other areas permitted by laws and regulations, and shall not unreasonably encumber the site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the work.

Should any claim be made by any such owner or occupant because of the performance of the work, the Contractor shall promptly settle with such other party negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

6.13 - Utility Interruption:

In the event of interruption to utility services as a result of accidental breakage, the Contractor shall promptly notify the proper utility and cooperate with said utility in the restoration of services. Accidental interruption of utilities shall not deem a reason for an extension of time. If a water or sanitary service is accidentally severed and the City is called in by the Engineer to fix it, the Contractor will be charged for the City's time and materials to fix the break.

Sanitary and water service leads are the ownership of the landowner. The City will not mark the leads. Each lead must be reconnected by the end of the day. If a lead is damaged, the Contractor must repair it at their expense. The lead locations shown on the plans are for planning purposes only and do not reflect their correct location.

6.14 - Hauling on Local Streets:

Hauling on local streets will not be permitted unless given written authorization by the City Engineer.

6.15 - Removal of Excavated Materials:

All excess materials excavated during the progress of the work and not required for backfilling, all timber cut from the right-of-way, and any and all other materials which have been encountered and handled during the construction operation, and which constitute a disposable surplus during or at the end of the construction period shall belong to the Contractor unless the City requests this material in the bid documents. If the City requests such material, the material shall be hauled and neatly piled to the site, within the City boundary limits as specified.

6.16 - Salvaging Fire Hydrants, Catch Basin and Manhole Castings and Lids:

Surplus manholes, fire hydrants, catch basin castings, manhole castings, and lids shall belong to the City. The Contractor shall neatly stockpile the material as directed by the Engineer within the City limits.

6.17 - Safety and Protection:

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precaution and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety and shall provide the necessary protection to prevent damage, injury, or loss to persons on the site who may be affected by: 1) the work and materials and equipment to be incorporated therein on the site; and 2) other property at the site adjacent thereto. The Contractor, before excavating, shall call MISS DIG at 811 or 1-(800) 482-7171, three days prior to excavating, excluding weekends and holidays. This requirement does not relieve the Contractor from notifying utilities not on the MISS DIG system.

6.18 - Safety Representative:

Contractor shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.19 - Hazard Communication Programs:

Contractor shall be responsible for coordinating any exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws and regulations.

6.20 - Survey Markers:

Ariy monument markers that are torn out of the ground by the Contractor before the surveyors witness them; will be the responsibility of the Contractor, as per the Special Provisions for "monument preservation."

6.21 - Use of Explosives:

Use of explosives will not be permitted unless given written authorization by the City Engineer.

6.22 - Sanitary:

The Contractor shall provide for his employees an abundant and convenient supply of drinking water taken from the City mains or from some other safe and wholesome source and shall give orders against the use for drinking purposes of any water in the neighborhood known to be prejudicial to the health of employees.

The Contractor shall provide at convenient points, properly secluded from observation, a sufficient number of sanitary conveniences for the use of the employees, and shall maintain them strictly without nuisance and without offense to the public or to residents in the vicinity of the work. The number, character, location, and condition of the maintenance of these utilities must at all times be such that will meet with the approval of the Engineer.

6.23 - Drains:

The Contractor shall maintain in continuous and effective service all drains and watercourses touched during the progress of the work. If it becomes necessary in the prosecution of the work to interfere with, interrupt or obstruct the natural drainage of the surface, or the flow of the artificial drainage, the Contractor shall provide for same during the progress of the work in such manner that no damage will result either to the public or private interest; but no such interference with, interruption of or obstruction of drainage will be permitted without the written consent of the City Engineer. However, such consent shall in no manner relieve the Contractor from full responsibility for the consequences.

6.24 - Maintenance During Construction:

Routine maintenance is the repair of roads or bridges due to normal wear and tear of traffic and weather. Routine maintenance does not include damage done by the Contractor's vehicles or equipment. The City will do the snow plowing and ice control work. During periods of approved seasonal suspensions, the City will assume the routine maintenance.

No claim for additional compensation will be allowed for any inconvenience or delay caused by the Contractor as a result of routine maintenance operations performed by the City. When through traffic is maintained, the Contractor shall perform routine maintenance on that portion of the roadbed surface on which construction operations have begun.

The Contractor shall be responsible for, at the Contractor's expense, for routine maintenance on all temporary roads constructed by the Contractor. The Contractor shall provide, at the Contractor's expense, reasonable access for local traffic to property along the project.

The Contractor shall, at the Contractor's expense, make all repairs or renewals required for all damage to highway facilities which is not attributable to normal wear and tear of traffic and weather, but is due to defective materials, to faulty workmanship, to operations of the Contractor, or work not protected properly from natural causes.

6.25 - Traffic Control:

No road shall be closed to traffic unless directed by the Engineer.

Partial and full road closures must follow the MMUTCD.

Where construction interferes with the normal use of existing roads, temporary traffic facilities shall be provided and maintained. Facilities for local traffic, both pedestrians and vehicle access, shall be provided at all times for the adjacent property owners. For through traffic, the contract will designate whether traffic will be maintained through all or a portion of the existing road or if traffic will be detoured.

Dust palliative shall be applied at the Engineer's request.

When the contract contains provisions for stage construction, the Contractor can request a change in the staging two weeks prior to the start. The Contractor shall not take action to implement the change until directed by the Engineer. If the proposed changes cost more, then those costs shall be borne by the Contractor.

If at any times during the construction the Engineer determines that traffic control devices are deficient, the Contractor will be notified immediately in writing to fix the deficiency. If the deficiency is not corrected, the Engineer may stop any of the affected work until corrective action is taken.

6.26 - Cleaning Site:

The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by his employees or work.

6.27 - Water Shut Offs:

The Contractor must place fliers at each residence at least 24 hours prior to a known water shut-off. If the shut-off is determined to entail a larger area than what was intended, the Contractor must re-distribute the fliers and wait 24 more hours for the intended shut-off. No water shut-off will be scheduled on a Friday or the day before a holiday without the Engineers approval. Once the water system is shut down but before the main is cut, the Contractor must confirm that no businesses are without water that were not notified. If there are businesses without water that were not notified then the main will not be cut. At the end of each day, the Contractor will be responsible to assure that business owners and residences have water.

Water service leads shown on the plans are approximate locations only. The water lead is the ownership of the landowner per City ordinance. During a MISS DIG call in, the known curb stop boxes will be marked only. The City does not mark the path the water service goes to the main or to the house. If this service is damaged during excavation, the Contractor will be liable to fix the service lead. If new grades are necessary during construction in the boulevard the curb stop boxes must be lowered flush with the new boulevard grade at the Contractor's expense.

6.28 - Street Sweepings:

Adjacent streets and streets open to traffic must be kept free from dust and dirt. A front end or back end broom will not be acceptable to clean the streets unless thoroughly watered down so no dust arises; a self-contained mechanical sweeper *should be used* for this purpose.

6.29 - Final Cleanup:

Before final acceptance of the work, the Contractor shall remove all false work, unused materials, erosion control devices, rubbish, approaches, buildings, machinery, equipment, and surplus material in conjunction with the contract and the right-of-way restored in a neat and presentable condition satisfactory to the Engineer. Paved roadbeds shall be cleaned within 5 working days prior to opening the pavement surface to traffic. Cleaning of roadbeds shall be performed in a manner that will not cause airborne dust.

Unless otherwise provided, full compensation for removal and disposal of materials for final clean will be considered as included in other items of work and no separate payment will be made.

6.30 - 24 Hour Call Number:

The Contractor shall give to the Engineer an emergency number where someone can be reached 24 hours a day. This person needs to be able to take care of problems within one hour which may arise during the construction while the Contractor is on the site or off the site. If the City takes care of the problem after 1 hour, the Contractor will be charged for the City's time and materials to correct the problem.

6.31 - Construction Safety Program:

The Contractor shall submit to the City an Emergency Site Plan which includes, but is not limited to outlining the Contractors plan for accident and fire prevention or mitigation on work to be done under the contract. 24-hour call numbers of key personnel in the Contractors organization shall also be submitted in case of an accident.

6.32 - Shop Drawings and Samples:

The Contractor shall submit shop drawings and/or samples to the Engineer for review and approval in accordance with the acceptable schedule and quantity of shop drawings and sample submittals agreed to at the pre-construction meeting. The data shown on the drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the Engineer the materials. The material shall show intended use, fabrication, shipping, handling, storage, assembly, specified performance criteria, installation requirements, catalog numbers, installation pertaining to the performance of work and other pertinent information.

6.33 - Record Documents:

Contractor shall maintain in a safe place at the site one record copy of all drawings, specifications, addenda, written amendments, change orders, work change directives, field orders, and written interpretations and clarifications in good order and annotated to show changes made during construction.

These record documents together with all approved samples and a counterpart of all approved shop drawings will be available to the Engineer for reference. Upon completion of the work, these record documents, samples, shop drawings will be delivered to the Engineer.

Each submittal shall bear a stamp or specified written indication that the Contractor has satisfied the obligations of the Contract. If at the time of submittal there are any variances, the Contractor shall give the Engineer specified notice of such variances. By submission of this variance does not constitute acceptance by the Engineer.

6.34 - Continuing the Work:

Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with the City. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by the *Contractor May Stop or Terminate* Section.

6.35 - Archeology and Historical Findings:

If the Contractor finds what appear to be items of potentially archaeological or historical significance (such as bones, artifacts, or buried foundations), the Contractor must immediately stop operations in that location and notify the Engineer. The Engineer will investigate and will direct the Contractor either to resume operations or to continue the suspension of operations, in accordance with subsection 9.02.

The Contractor must cooperate in the recovery of archeological and historical items, as directed by the Engineer. This work will be covered by an adjustment according to subsection 12.01, except there will be no payment for idled equipment that can be used elsewhere on the project. If appropriate, an extension of contract time will be granted.

6.36 - Contractor General Warranty and Guarantee:

Contractor warrants and guarantees to the City that all work will be completed in accordance with the Contract Documents, will be completed in a competent and workman-like manner and free from defects. Contractor's warranty and guaranty hereunder excludes defects or damages caused by: 1) abuse, modification, or improper maintenance or operation by persons other than the Contractor, Subcontractor, supplier or any other individual or entity for whom the Contractor is responsible; 2) or normal wear and tear under normal usage.

Contractor's obligation to perform and complete the work in accordance with the contract documents shall be absolute. None of the following constitute an acceptance of the work that is not in accordance with the contract documents or a release of Contractor's obligation to perform the work in accordance with the contract documents; 1) observations by Engineer, 2) recommendation by Engineer, 3) issuance of a certificate of substantial completion by the City Engineer, 4) use or occupancy of the work, 5) acceptance by City or any failure to do so, 6) any reviews and approval of a shop drawing or sample, 7) any inspection, test or approval by others and any 8) correction of defective work by the City.

6.37 - Indemnification:

To the fullest extent permitted by laws, regulation and City Ordinances, the Contractor shall indemnify and hold harmless the City, Engineer, Engineer's consultants and the officers, directors, partners, employees, agents, Council Members, and other consultants and subcontractor of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the work provided that any such claim, cost, loss, or damage:

- A. Is attributable to bodily injury, sickness, disease, death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting there from, and:
- B. Is caused in whole or in part by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by laws, regulations, or City Ordinances regardless of the negligence of any such individual or entity.

In any and all claims against the City or Engineer or any of their respective consultants, agents, officers, directors, partners, Council Members, or employees by an employee (or the survivor or personal representative of such employee) of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work, or anyone for whose acts any of them may be liable, the indemnification obligation as stated above shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such subcontractor, supplier, or other individual or entity under worker's compensation acts, disability benefit acts, or other employee benefit acts.

The indemnification obligations of Contractor as stated above shall not extend to the liability of the Engineer and Engineer Consultants or to the officers, directors, partners, employees, agents, other consultants and subcontractor and Council Members, of each any of them arising out of: 1) preparation of approval of, or the failure to prepare or approve, maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; or 2) giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.1 - Related Work at Site:

The City may perform other work related to the Project at the site by the City's employees, or let other direct contracts therefore, or have other work performed by utility owners. If such other work is not noted in the contract documents, then; 1) written notice thereof will be given to the Contractor prior to starting any such other work; and 2) if the City and the Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustments in the contract price or contract times, that should be allowed as a result of such other work, a claim may be made.

Contractor shall afford each other entity who is to perform work at the project a proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the work with others.

Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the Engineer and the others whose work will be affected. If the proper execution or results of any part of Contractor's work depends upon work performed by others under this article, the Contractor shall inspect such other work and promptly report to the Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's work. Contractor's failure

to so report will constitute an acceptance of such other work as fit and proper for integration with the Contractor's work except for latent defects and deficiencies in such other work.

7.2 - Coordination:

If the City intends to contract with others for performance of other work on the project at the site, the following will be set in the Supplementary Conditions; 1) individual or entity who will have authority and responsibility for coordination of the activities among the various Contractors will be identified; 2) specific matters to be covered by such authority and responsibility will be itemized; and 3) the extent of such authority and responsibility will be provided.

ARTICLE 8 - CITY'S RESPONSIBILITIES

8.1 - Communication:

Except as otherwise provided in these General Conditions, the City shall issue all communications to the Contractor through the Engineer.

8.2 - Replacement of Engineer:

In case of termination of the employment of the Engineer, the City shall appoint an Engineer whose status under the contract documents shall be that of the former Engineer.

8.3 - Furnish Data:

The City shall promptly furnish the data required of the Owner under the contract documents.

8.4 - Pay Promptly When Due:

The City shall make payments to the Contractor promptly when they are due, as set forth in the contract documents.

8.5 - Lands, Easements, Reports and Tests:

The City's duties in respect to providing lands, easements, reports, tests and providing engineering surveys to establish reference points are set forth in the contract documents.

8.6 - Insurance:

The City's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in these contract documents.

8.7 - Change Orders:

The City is obligated to execute change orders as indicated in these contract documents.

8.8 - Survey Staking, Inspections and Approvals:

The City's responsibilities in respect to certain inspections, survey staking, test and approvals is set forth in these contract documents.

8.9 - Limitations on Owners Responsibilities:

The City shall not supervise, direct or have control or authority over, nor be responsible for the Contractor's means, methods, techniques sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the performance of the work. City will not be responsible for Contractor's failure to perform the work in accordance with the contract documents.

8.10 - Undisclosed Hazardous Environmental Condition:

The City's responsibility in respect to undisclosed hazardous environmental condition is set forth in these contract documents.

8.11 - Use of City Water Supply:

Hydrants and valves shall be opened and closed by City Utility personnel only. Contractors desiring to use water from the City water mains, by public hydrants or otherwise, will be required to make application to the Water Department and conform to the rules and regulations provided in such cases by City Ordinance, and Rules of the Department.

If the Contractor uses a fire hydrant, a registered and tested reduced pressure zone valve system must be used. Water shall be paid for on the basis of the estimated quantity used at the current commodity rate.

If a permitted hydrant is being used to fill and/or flush a hydrant no payment for the water is required. If the water is being used for any other purpose, the going rate for the water will be estimated and charged to the Contractor.

8.12 - Materials:

The City has a limited inventory of materials in stock to use during its repairs. The City will not furnish the Contractor with any materials or supplies or transportation required for the contract or extra work without the expressed written order from the City Engineer. The Contractor is required to have on hand a vast array of materials so the Contractor can fix any and all water and/or sanitary services or mains if they break.

8.13 - Surveys:

The City shall furnish all surveys and provide stakes for line and grade. If, the Contractor removes the stakes and a re-stake is required, the Contractor will be required to pay for the cost of the re-staking.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.1 - General Authority of the Engineer:

The Engineer will decide all questions which may arise to the interpretation of the plans and specifications, and all questions as to the satisfactory and acceptable fulfillment of the terms of the contract by the Contractor.

The Engineer will also decide all questions, which may arise as to the quality and acceptability of the materials furnished, work performed, manner of performance and rate of progress of the work. The

Engineer will clarify and decide as to the true intent of the plans and specifications when an inconsistency, omission, conflict or uncertainty is discovered.

The Engineer shall not supervise, direct or have control or authority over, nor responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with laws and regulations applicable to the performance of the work. Engineer will not be responsible for the Contractor's failure to perform the work in accordance with the contract documents.

9.2 - Engineer's Authority to Suspend Work:

The Engineer will have the authority to suspend the work wholly or in part, for period(s) deemed necessary. Work may be suspended due to unsuitable weather or other conditions as are considered unfavorable for the prosecution of the work or for all other conditions or reasons deemed to be in the interest of the public. The Engineer shall not suspend work without written notice to the Contractor.

Upon suspension, the work shall be put in satisfactory condition, covered and protected. The work shall not be resumed until permitted by written order of the Engineer.

If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for a period of time not originally anticipated, customary or inherent to the construction industry and the Contractor believes that additional compensation or contract time is due as a result of such suspension or delay, the Contractor can file an intent to claim as outlined in the contract documents.

No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

The Engineer shall have the authority to reject all work and materials which do not conform to the contract specifications.

9.3 - Authority and Duties of Resident Project Representatives:

The City and its authorized representatives shall have access to all parts of the work at all times and shall be furnished such information and assistance by the Contractor as may be required to make complete and detailed observations. These observations may also occur at a mill, plant, laboratory or shop. Claims by the Contractor for delays or inconveniences due to these operations will not be considered. Resident Project Representatives may be appointed to inspect materials used and work done. Inspection may extend to all parts of the work and preparation or manufacture of materials for use in the work. Resident Project Representatives are not authorized to revoke or change the specifications or plans. If a dispute arises between the contractor and the Resident Project Representative as to the materials furnished or performance of the work, the Resident Project Representative shall have the authority to reject materials or suspend the work until the dispute is decided by the Engineer.

Work done contrary to the Resident Project Representatives directions or while suspended by the Resident Project Representative will be considered unauthorized and may have to be removed and replaced at the Contractor's expense. In no instance will any action or omission on the part of the Resident Project Representative relieve the Contractor of the responsibility of completing the work according to the plans and specifications.

ARTICLE 10 - CHANGES IN THE WORK

10.1 - Authorized Changes in the Work:

Without invalidating the agreement and without notice to any surety, owner may, at any time or from time to time, order additions, deletions, or revisions in the work by a written amendment, a change order, or a work change directive. Upon receipt of any such document, Contractor shall promptly proceed with the work involved which will be performed under the applicable conditions of the contract documents (except as otherwise specifically provided).

If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the contract price or contract times, or both, that should be allowed as a result of a work change directive, may make a claim as stipulated in the contract documents.

10.2 - Unauthorized Changes in the Work:

Contractor shall not be entitled to an increase in the contract price or an extension of the contract times with respect to any work performed that is not required by the contract documents as amended, modified, or supplemented as provided in these contract documents, except in the case of an emergency as provided in these contract documents or in the case of uncovering work as provided in these contract documents.

10.3 - Execution of Change Orders:

Owner and Contractor shall execute appropriate change orders recommended by Engineer (or written amendments) covering:

- A. Changes in the work which are: (i) ordered by Engineer as provided in these contract documents, (ii) required because of acceptance of defective work as provided in these contract documents or Owner's correction of defective work under these contract documents, or (iii) agreed to by the parties;
- B. Changes in the contract price or contract times which are agreed to by the parties, including any undisputed sum or amount of time for work actually performed in accordance with a work change directive; and
- C. Changes in the contract price or contract times which embody the substance of any written decision rendered by City Engineer; provided that, in lieu of executing any such change order, an appeal may be taken from any such decision in accordance with the provisions of the contract documents and applicable laws and regulations, but during any such appeal, Contractor shall carry on the work and adhere to the progress schedule.

10.4 - Notification of Surety:

If notice of any change affecting the general scope of the work or the provisions of the contract documents (including, but not limited to, contract price or contract times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.5 - Claims and Disputes:

Claims and disputes will be handled under subsection 4.04, Resolving Discrepancies. Neither party shall be entitled to make a claim for or receive any loss of anticipated profit, consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption, attorney fees, claim preparation expenses, and the costs of litigation.

In the event after the bid is submitted, the Contractor becomes aware of or receives any information from the Owner or from any other source which might impact the amount of the Contractor's bid or result in claims, the Contractor shall promptly notify the Owner of the potential for such impacts and, to the extent possible, the Contractor shall quantify the potential impact on the Contractor's bid. Thereafter, the parties shall meet and attempt to agree on whether the newly discovered information shall impact on the Contractor's bid and, if so, how the potential claims shall be tracked and quantified. If the Contractor fails to follow this procedure then any potential claims by the Contractor as a result of the newly received or discovered information are waived.

ARTICLE 11- COST OF THE WORK, CASH ALLOWANCES and UNIT PRICE WORK

11.01 - Cost of Work:

A. **Costs Included:** The term cost of the work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the work. When the value of any work covered by a change order or when a claim for an adjustment in contract price is determined on the basis of cost of the work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the work or because of the event giving rise to the claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the site. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing work outside of regular hours, on Saturday, Sunday, or legal holidays, shall not be included in the above except to the extent pre-authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposited funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner.

All trade discounts, rebates and refunds and return from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors of work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors

accept to Owner and Contractor and shall deliver such bids to Owner, who will then determine with the advice of Engineer which bids, if any, will be acceptable.

If any subcontract provides that the Subcontractor is to be paid on the basis of cost of the work, plus a fee, the Subcontractor's cost of the work and fee shall be determined in the same manner as Contractor's cost of the work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the work.
 - b. Cost, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, supplies, equipment, facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the work, and cost, less market value, of such items used but not consumed which remain at the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or other in accordance with the rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment machinery, or parts shall cease when the use no longer necessary for the work.
 - d. Sales, consumer, use, and other similar taxes related to the work, and for which Contractor is liable, imposed by the laws and regulations.
 - e. Deposited lost for causes other than negligence of Contractor, any subcontractor, or anyone directed or indirectly employees by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written damages, and expenses shall be included in the cost of the work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the site.

- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the work.
- i. When the cost of the work is used to determine the value of a change order or of a claim, the cost of premiums for additional bonds and insurance required because of the changes in the work or caused by the event giving rise to the claim.
- j. When all the work is performed on the basis of cost-plus, the costs of premiums for all bonds and insurance Contractor is required by the contract documents to purchase and maintain.

B. Cost Excluded: The term cost of the work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, (or partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the site or in Contractor's principal or branch office for general administration of the work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
 - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the site.
 - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 4. Costs due to the negligence of Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.01.A and 11.01.B.
- C. Contractor's Fee: When all the work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the agreement. When the value of any work covered by a change order or when a claim for an adjustmnt in contract price is determined on the basis of cost of the work, Contractor's fee shall be determined as set forth in paragraph 12.01.C.
- D. Documentation: Whenever the cost of the work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.2 - Cash Allowances:

It is understood that Contractor has included in the contract price all allowances so named in the contract documents and shall cause the work so covered to be performed for such sums as may be acceptable to Owner and Engineer. Contractor agrees that:

- A. The allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and
- B. Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the contract price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

Prior to final payment, an appropriate change order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of work covered by allowances and the contract price shall be correspondingly adjusted.

11.3 - Unit Price Work:

- A. Where the contract documents provided that all or part of the work is to be unit price work, initially, the contract price will be deemed to include for all unit price work an amount equal to the sum of the unit price for each separately identified item of unit price work times the estimated quantity of each item as indicated in the agreement.
- B. The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial contract price. Determinations of the actual quantities and classifications of unit price work performed by Contractor will be made by Engineer subject to the provisions of these contract documents.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a claim for an adjustment in the contract price in accordance with these contract documents:
 - 1. The quantity of any item of unit price work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the agreement; and
 - 2. There is no corresponding adjustment with respect to any other item of work; and
 - 3. If Contractor believes that Contractor is entitled to an increase in contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in contract price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGES OF THE CONTRACT PRICE AND TIMES

12.1 - Adjustments:

An adjustment will be made when there is a written change order or by written amendment to the contract made by the City Engineer as a result of the Contractor filing a claim using one of the following three (3) methods.

- A. Where the work involved is covered by unit prices contained in the contract documents by application of such unit prices to the quantities of the items involved; or
- B. Where the work involved is covered by unit prices for major items of work contained in the contract documents by a mutually agreed lump sum (which may include an allowance for overhead and profits not necessarily in accordance with the stipulations below); or
- C. Where the work involved is not covered by unit prices contained in the contract documents and agreement to a lump sum is not reached on the basis of the cost of the work, the following force account method will apply.

12.2 - Force Account:

The adjustments shall be the costs, as described below for the labor, equipment and materials used to complete the work incurred as a result of a differing site condition. Down time will not be paid on claims of less than 1 hour per day or after the normal end of the regular shift. payment for the work will be on the following basis:

- A. Labor - The cost for labor shall be the reasonable cost calculated as follows: foreman and laborers will receive the rate of wages as determined by what they were receiving before the adjustment started. This rate will be paid for the time that the laborers and foreman are engaged in the work.

This will include hours required by a collective bargaining agreement or other employment contract applicable to the class of labor employed on the work, exclusive of time included in the "estimated operating costs."

The Contractor will receive the cost paid to, or in behalf of workers for vacation benefits, health and welfare benefits, pension fund benefits or other benefits when the amounts are required by a collective bargaining agreement or other employment Contract generally applicable to the classes of labor employed on the work.

The superintendent's compensation will not be included in this payment. A 15% markup can be included.

- B. Bonds, Insurance and Tax-Bond premium, workmen's compensation insurance, personal injury, public liability and property damage, public liability insurance, unemployment compensation and Federal Social Security levied against the Contractor will be paid at cost. Single business tax will not be paid for. The Contractor shall furnish satisfactory evidence of the amounts paid for each of the required costs as related to the adjustment. No additional add-ons will be permitted.
- C. Materials - The cost for materials shall be the reasonable cost of materials used by the Contractor to perform the work as reflected in the originally received bills for the materials used and the freight charges paid on the materials. A discount for prompt payment or penalty for late payment will not be considered in determining the net amount of the bill. Where materials used are not specifically purchased for use on this work but

are taken from the Contractor's stock, the Contractor shall submit a certification of the quantity, price and freight on the material in lieu of original bills and invoices. A 15% markup will be allowed.

- D. Equipment - For equipment other than small tools, the use of which is approved by the Engineer, the Contractor will be paid as follows:

The equipment rates include the cost of fuel, oil, lubrication, supplies, necessary attachments, repairs, overhaul and maintenance of any kind of depreciation, storage, overhead, profits and all incidentals. The rates also include the cost of insurance covering the usual insurable risks, including fire and theft. The City will not be liable for losses that can be covered by insurance. The City will not pay for more than eight hours in one day for down time equipment.

Upon request, the Contractor shall furnish to the Engineer either original bills and invoices or certification documenting the equipment's original invoice price plus improvements. The City will not pay for equipment cost over the equipment's original invoice cost plus any document improvements on a total project basis.

For Contractor owned equipment, the rental rate established for each piece used, including appurtenances and attachments to equipment, will be determined by using the *Rental Rate Blue Book for Construction Equipment*, Volume 1, 2, or 3, by Dataquest, Inc.

The edition that is current at the time the force account work is started will apply. The established base hourly rental rate will be equal to the monthly rate divided by 176, modified by the rate adjustment factor and the applicable map adjustment factor, plus the "estimated operating costs per hour." For idled equipment, no operating costs listed in the Blue Book will be allowed.

For equipment not listed in the Blue Book, the rental rate will be determined by using the rate listed for a similar piece of equipment in which the capacity, size, horsepower and age are properly considered. Equipment for which there is no comparable cost in the Blue Book, the monthly rate shall be reasonable but not more than 5 percent of the invoiced cost of the equipment.

The base hourly rate shall then be determined by dividing the monthly rate by 176. Rates shall be agreed upon in writing before the equipment is used.

No payment will be allowed for small hand and power tools that are not listed in the Blue Book. Small hand and power tools listed in the Blue Book at a rate of less than \$1.00 per hour will be considered as part of overhead and will not be paid for separately. The rates used for Contractor owned trucks used to haul material shall be in accordance with blue book rates. Separate payment for the driver will be allowed. The rental rate for the foreman's transportation unit will be \$10.00 per hour, including fuel.

The time charged per day for equipment used productively in force account work will be the time required to do the work. For equipment which is required intermittently, the rental time will be determined after the equipment is first used while work is being performed on the Force Account activity and the equipment is needed. The rental rate for intermittently used equipment will be at the full rate or stand by rate depending upon the productive use or non-use of the equipment.

In addition, the payment will include traveling time to the location of the work when the equipment is moved under its own power within the project limits. When transportation from one site to another is by other than its own power, the actual operating time during period of loading and unloading will be paid for at the regular rental rate and transportation costs will be allowed.

Transportation charges for each piece of equipment to and from the work site will be paid provided:

1. Equipment is obtained from the nearest available source;
2. Return charges do not exceed the delivery charges;
3. Charges are restricted to those units of equipment not already available and not on or near the project.

The above provisions apply to the equipment and plant owned directly by the Contractor or by entities that are divisions, affiliates, subsidiaries or any other way related to the Contractor or parent company.

The standby rate will only be allowed if both of the following conditions are met:

1. The Engineer specifically required the equipment to remain on the site for later use on the Force Account activity; and
2. Work is being performed on the Force Account activity when the equipment is idle. For Contractor owned equipment, the payment will be made at one-half the rate established above. No payment will be allowed for operating cost. Payments for standby time will not be made on any day the equipment operates for 8 or more hours. For equipment accumulating less than 8 hours operating time on any normal work day, standby payments will be limited to only that number of hours that, when added to the operating time for that day, equals 8 hours.

If the Contractor is required to rent specific type of equipment, the Contractor shall inform the Engineer of the need to rent the equipment and of the rental rate for that equipment before using it on the work site. The Contractor will be paid for the actual rental for the equipment for the time that the equipment is used to accomplish the work, plus the cost of moving the equipment on and away from the job, provided the total rental rate does not exceed the rental rate established by the Blue Book plus operating costs. The Contractor shall provide a copy of invoices for all rental expenses.

For all of the above, the payable time does not include elapsed time while the equipment is broken down or the time elapsed after the Engineer has advised the Contractor the equipment is no longer needed, except for transportation cost.

- E. Subcontracting or Hiring Services by Others. For administration costs in connection with subcontract work or hiring of services provided by others to perform specialized type work which the Contractor is not qualified to do, the Contractor shall receive an amount equal to five percent (5%) of the total cost of the work computed as set forth above. Prior approval by the Engineer is required.

12.3 - Additional Contract Time:

Additional contract times will be determined by using the Michigan Department of Transportation 2012 Standard Specifications for Construction starting at Section 108.06 through 108.09 except in Section 108.08, Section A, paragraph should read... fails to give Notice to Proceed within 28 calendar days... instead of... fails to award the contract...

12.4 - Liquidated Damages:

Liquidated damages will be charged to the Contractor if no additional time is given to the Contractor at the rate the City is damaged by the contract not being done on time. This includes consultant's inspection time, City's inspection time and other costs associated due to the project not being finished on time. The amount per day will be evaluated before the bid of the contract and will be listed in the Supplementary General Conditions. This number is a baseline and if substantiated this number could change according to the damages suffered by the City. This is not meant to be a penalty.

12.5 - Default of Contract:

- A. Notice of Default. If the Contractor is responsible for any of the following, the Engineer may give the Contractor and Surety written notice of default and the action required to be taken by the Contractor and Surety:
1. Failing to prosecute the work with the labor, equipment, or materials sufficient to complete the work within the contract time and according to the progress schedule;
 2. Performing the work improperly;
 3. Neglecting or refusing to remove material or to reconstruct work that has been rejected as defective and unsuitable; or
 4. Failing to perform the work as required by the contract for any other reason.
- B. Owner Completion of Work. If any of the following occurs, the City will have full power and authority to take the work out of the hands of the Contractor and Surety, including appropriation and use of any materials on the project, and use of a contract or any other method that the City determines may be necessary to complete the work:
1. The Contractor or Surety, within a period of 10 days after the notice of default, does not proceed in a manner that is reasonably satisfactory to the Owner.
 2. The Contractor becomes insolvent or is declared bankrupt.
 3. A court judgment is entered against the Contractor which is not satisfied within 21 days of entry which could jeopardize the continued operation of the Contractor.
 4. The Contractor makes an assignment for the benefit of the Contractor's creditors.
 5. The Contractor files proceedings for reorganization in accordance with the Bankruptcy Act, or such proceedings are filed against the Contractor.

If the Owner takes over the uncompleted work, the Owner will deduct all additional costs and damages, and the costs and charges of completing the same, from monies due or to become due the Contractor. If the total of the damages, costs, and charges exceeds the balance of the contract amount that would have been payable to the Contractor had the Contractor completed the work, the Contractor and Surety must pay the amount of the overage to the Owner upon request.

12.6 - Termination of Contract:

If the Owner determines that termination is in the City's best interest, the Owner may terminate the contract or any portion of the contract. If the Owner orders termination of a contract effective on a

certain date, the Owner will pay the Contractor for completed or partially completed work as of that date at the contract unit prices or on a force account basis, as determined by the Engineer. If the Owner terminates a portion of the contract, the Owner may stop delivery and payment for materials made unnecessary. The Owner will pay for pay items eliminated in their entirety by the termination in accordance with subsection 103.02.F of the Michigan Department of Transportation's 2012 Standard Specifications for Construction.

The Owner may choose to purchase from the Contractor acceptable materials obtained for the work but not used at actual cost delivered to a prescribed location plus 15 percent, or otherwise disposed of as mutually agreed. The Contractor must submit any claim for additional compensation not covered in the contract within 60 days after the effective termination date, or as otherwise authorized by the Owner. The Contractor must make records available to support the validity and amount of anticipated profits due to the Owner's termination of the contract or any portion of the contract.

The Owner's decision to terminate the contract or a portion of the contract will neither relieve the Contractor of its contractual responsibilities for the completed work, nor will it relieve the Surety of its obligation for any claim arising out of the work performed.

- A. Reasons for Termination. The Owner may terminate the contract after determining that, for reasons beyond either the Owner's or the Contractor's control, the Contractor is prevented from proceeding with or completing the contract work. Reasons for termination may include, but are not limited to, the following:
1. Executive orders by the President of the United States relating to war or national defense.
 2. A national emergency that creates a serious shortage of materials.
 3. Orders from duly constituted authorities relating to energy conservation, preservation of archaeological and historical findings, funding problems, or a change in project priorities.
 4. Restraining orders or injunctions obtained by third-party citizen action resulting from national or local environmental protection laws, or where the issuance of the order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor.
 5. A differing site condition or altered character of work amounting to significant additional contract costs.
- B. Immediate Obligations. The Engineer will deliver a Notice of Termination to the Contractor that specifies the extent of termination and the effective date. After receipt of a Notice of Termination, the Contractor must immediately proceed with the following obligations:
1. Stop work as specified in the notice.
 2. Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the contract.
 3. Terminate all subcontracts to the extent they relate to the work terminated.
 4. Transfer title and deliver to the Owner the following:
 - a. For the fabricated, partially fabricated, or unfabricated parts, all work in progress, completed work, supplies and other material produced or acquired for the terminated work, and
 - b. The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, the Contractor would have been required to provide to the Owner.
 5. Complete the performance of the non-terminated work.

6. With the Engineer, on a date identified by the Engineer, take inventory of acceptable materials obtained for the project that has not been incorporated into the work.
7. Take any action necessary, or directed by the Engineer, for the protection and preservation of the property related to the contract that is in the possession of the Contractor and in which the Owner has or may acquire an interest.

ARTICLE 13 - TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK:

13.1 - Notice of Defects:

Prompt notice of all defective Work of which the Engineer has actual knowledge of will be given to Contractor. All defective work will be rejected, corrected or accepted.

13.2 - Access to Work:

Engineer, Engineer's Consultants, other representatives of the City, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the work at reasonable times for their observation and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's site safety procedures and programs so that they may comply therewith as applicable.

13.3 - Tests and Inspections:

- A. Contractor shall give Engineer timely notice of readiness of the work for all required inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. City shall employ and pay for the services of an independent testing laboratory to perform inspections, tests, or approvals required by the contract documents except:
 1. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04 below shall be paid as provided in said paragraph 13.04; and
 2. as otherwise specifically provided in the contract documents.
 3. If laws or regulations of any public body having jurisdiction require any work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection, or approval.
 4. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the work.

- C. If any work (or the work of others) that is to be inspected, tests or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.
- D. Uncovering work as provided in the paragraph above shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.4 - Uncovering Work:

- A. If any work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request shall uncover, expose, or otherwise make available for observation, inspection or testing as Engineer may require, that portion of the work in question, furnishing all necessary labor, material and equipment.
- C. If it is found that such work is defective, Contractor shall pay all costs and damages caused by, arising out of, or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others), and Owner shall be entitled to an appropriate decrease in the contract price, and, if the parties are unable to agree as to the amount thereof, may make a claim.
- D. If, however, such work is not found to be defective, Contractor shall be allowed an increase in the contract price or an extension of the contract times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount of extent thereof, Contractor may file a claim.

13.5 - Owner May Stop the Work:

If the work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the contract documents, Owner may order Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated.

13.6 - Correction or Removal of Defective Work:

If required by Engineer, Contractor shall promptly, as directed, either correct all defective work, whether or not fabricated, installed or completed or, if the work has been rejected by Engineer, remove it from the site and replace it with work that is not defective.

Contractor shall pay all costs and damages caused by or resulting from such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others).

13.7 - Correction Period:

- A. Upon the discovery of defective work and for such period of time as may be prescribed by Laws and Regulations or by the terms of any applicable special guarantee required by the contract documents any work is found to be defective, Contractor shall promptly, without cost to City and in accordance with Engineer's written instructions: (I) correct such defective work, or, if it has been rejected by Engineer, remove it from the site and replace it with work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other work or the work of others resulting there from.
- B. If Contractor does not promptly comply with the terms of such instructions, or in any emergency where delay would cause serious risk of loss or damage, City may have the defective work corrected or the rejected work removed and replaced, and all direct, indirect and consequential costs and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals or court, or arbitration or other dispute resolution costs and all costs of repair or replacement of work by others) will be paid by Contractor.

13.8 - Acceptance of Defective Work:

If, instead of requiring correction or removal and replacement of defective work, City (and, prior to Engineer's recommendation of final payment,) prefers to accept it, City may do so. Contractor shall pay all costs attributable to Owner's evaluation of and determination to accept such defective work (such costs to be approved by Engineer as to reasonableness and to include but not limited to all fees and charges of engineers, architects, attorneys and other professionals, or court, or arbitrator or other dispute resolution costs).

If any such acceptance occurs prior to Engineer's recommendation of final payment, a change order will be issued incorporating the necessary revisions in the contract documents with respect to the work; and City shall be entitled to an appropriate decrease in the contract price, and, if the parties are unable to agree as to the amount thereof, Contractor may make a claim. If the acceptance occurs after such recommendations, an appropriate amount will be paid by Contractor to City.

13.9 - Owner May Correct Defective Work:

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective work or to remove and replace rejected work as required by Engineer in accordance with paragraph 13.06, or if Contractor fails to perform the work in accordance with the contract documents, or if Contractor fails to comply with any other provision of the contract documents, City may, after seven days written notice to Contractor, correct and remedy any such deficiency.
- B. In exercising the rights and in connection with such corrective and remedial action, City may exclude Contractor from all or part of the site, take possession of all or part of the work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the work all materials and equipment stored at the site or for which Owner has paid Contractor but which are stored elsewhere.
- C. Contractor shall allow City, City's representatives, agents and employees, City's other contractors and Engineer and Engineer's Consultants such access to the site as may be necessary to enable City to exercise the rights and remedies under this paragraph. All costs and damages incurred or sustained by City in exercising such rights and remedies will be charged against Contractor and a change order will be issued incorporating the necessary revisions in the

contract documents with respect to the work; and City shall be entitled to an appropriated decrease in the contract price. Such costs and damages will include but not be limited to all fees and charges of engineers, architects, attorneys and other professionals, all court, or arbitration or other dispute resolution or damaged by correction, removal or replacement of Contractor's defective work.

- D. Contractor shall not be allowed an extension of the contract times (or milestones) because of any delay in the performance of the work attributable to the exercise by City of City's rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 - Schedules of Values:

The schedule of values established will serve as the basis for progress payments and will be incorporated into a form of application for payment acceptable to Engineer. Progress payments on account of unit price work will be based on the number of individual units completed or a proportion of a single unit unless otherwise called for in the specifications.

14.2 - Application for Progress Payment:

The days established for the submittals of each progress payment will be set up at the preconstruction meeting. Contractor shall submit to Engineer for review an application for payment filled out and signed by Contractor covering the work completed as of the date of the application and accompanied by such supporting documentation as is required by the contract documents. Stock piled materials will not be paid for unless specifically agreed upon by the Engineer once the Contractor files a claim.

14.3 - Contractor's Warranty of Title:

Contractor warrants and guarantees that title to all work, materials and equipment covered by application for payment, whether incorporated in the project or not, will pass to City no later than the time of payment free and clear of all liens.

14.4 - Review of Applications for Progress Payment:

- A. Engineer will, within ten days after receipt of each application for payment, either indicate in writing a recommendation of payment and present the application to City, or return the application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the payment with the Engineer's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.04.C) become due and when due will be paid by City to Contractor.
- B. Engineer's recommendation of any payment requested in an application for payment will constitute a representation by Engineer to City, based on Engineer's on-site observations of the executed work as an experienced and qualified design professional and on Engineer's review of the application for payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - 1. The work has progressed to the point indicated.

2. The quality of the work is generally in accordance with the contract documents (subject to an evaluation of the work as a functioning whole prior to or upon substantial completion, to the results of any subsequent tests called for in the contract documents, to a final determination of quantities and classifications for unit price work, and to any other qualifications stated in the recommendation), and
 3. The conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the work.
- C. However, by recommending any such payment Engineer will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the work beyond the responsibilities specifically assigned to Engineer in the contract documents or (ii) that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor.
- D. Engineer's recommendation of any payment, including final payment shall not mean that Engineer is responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performance of work, or for any failure of Contractor to perform or furnish work in accordance with the contract documents.
- E. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representation to City referred to in paragraph 14.4.A. Engineer may also refuse to recommend any such payment or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in Engineer's opinion to protect City from loss because:
- a. The work is defective, or completed work has been damaged requiring correction or replacement.
 - b. The contract price has been reduced by written amendment or change order.
 - c. Owner has been required to correct defective work or complete work in accordance with paragraph 13.09, or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A through 15.02.D inclusive.
- F. City may refuse to make payment of the full amount recommended by Engineer because:
- 1 Claims have been made against City on account of Contractor's performance or furnishing of the work.
 2. Liens have been filed in connection with the work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens.
 3. There are other items entitling City to a set-off against the amount recommended, or

4. Engineer has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.04.C.a. through 14.04.C.c. or paragraphs 15.02.A through 15.02.D inclusive; but Engineer must give Contractor immediate written notice stating the reasons for such action and promptly pay Contractor the amount so withheld or any adjustment thereto agreed to by City and Contractor, when Contractor corrects to Engineer's satisfaction for reasons for such action.

14.5 - Substantial Completion:

- A. When Contractor considers the entire work ready for its intended use Contractor shall notify Engineer in writing that the entire work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that City Engineer issue a certificate of substantial completion.
- B. Within a reasonable time thereafter, Owner, Contractor and Engineer shall make an inspection of the work to determine the status of completion.
- C. If Engineer does not consider the work substantially complete, Engineer will notify Contractor in writing giving the reasons therefore. If Engineer considers the work substantially complete, City Engineer will prepare and deliver to Contractor a certificate of substantial completion which shall fix the date of substantial completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment.
- D. City shall have the right to exclude Contractor from the work after the date of substantial completion, but City shall allow Contractor reasonable access to complete or correct items on the tentative list.

14.6 - Partial Utilization:

- A. Use by City at City's option of any substantially completed part of the work which: (I) has specifically been identified in the contract documents, or (ii) Engineer and Contractor agree constitutes a separately functioning and usable part of the work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the work, may be accomplished prior to Substantial completion of all the work subject to the following:
 1. Engineer at any time may request Contractor in writing to permit City to use any such part of the work which Owner believes to be ready for its intended use and substantially complete. If Contractor agrees that such will certify to Engineer that such part of the work is substantially complete and request City Engineer to issue a certificate of substantial completion for that part of the work.
 2. Contractor at any time may notify Engineer in writing that Contractor considers any such part of the work ready for its intended use and substantially complete and request City Engineer to issue a certificate of substantial completion for that part of the work.
 3. Within a reasonable time after either such request, Contractor and Engineer shall make an inspection of that part of the work to determine its status of completion. If Engineer does not consider that part of the work to be substantially complete, Engineer will notify Contractor in writing giving the reasons therefore. If Engineer considers that part of the

work to be substantially complete, the provisions of paragraph 14.05 will apply with respect to certification of substantial completion of that part of the work and the division of responsibility in respect thereof and access thereto.

4. No occupancy or separate operation of part of the work will be accomplished prior to compliance with the requirements of property insurance.

14.7 - Final Inspection:

Upon written notice from Contractor that the entire work or an agreed portion thereof is completed, Engineer will make a final inspection with Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such work or remedy such deficiencies.

14.8 - Final Application for Payment:

- A. After Contractor has completed all such corrections to the satisfaction of Engineer and delivered in accordance with the contract documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required certificates of inspection, marked-up record documents and other documents. Contractor may make application for final payment following the procedure for progress payments.
- B. The final application for payment shall be accompanied (except at previously delivered) by: (i) all documentation called for in the contract documents, including but not limited to the evidence of insurance required by, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to Engineer) of all liens arising out of or filed in connection with the work.
- C. In lieu of such releases or waivers of liens and as approved by City, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the work for which City or City's property might in any way be responsible have been paid for otherwise satisfied. If any Subcontractor or Supplier fails to furnish a Bond or other collateral satisfactory to City to indemnify City against any lien.

14.9 - Final Payment and Acceptance:

If on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final application for payment and accompanying documentation--all as required by the contract documents, Engineer is satisfied that the work has been completed and Contractor's other obligations under the contract documents have been fulfilled. Engineer will, within thirty days after receipt of the final application for payment, indicate in writing Engineer's recommendation of payment and present the Application to City for payment. At the same time City Engineer will give written notice to Contractor that the work is acceptable subject to the provisions of paragraph 14.10. Otherwise, Engineer will return the application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the application.

Thirty days after the corrected presentation to Engineer of the application and accompanying documentation, in appropriate form and substance and with Engineer's recommendation and notice of

acceptability, the amount recommended by Engineer will become due and will be paid by City to Contractor.

If through no fault of Contractor, final completion of the work is significantly delayed and if Engineer so confirms, Owner shall, upon receipt of Contractor's final application for payment and recommendation of Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance to be held by City for work not fully completed or corrected is less than the retainage stipulated in the agreement, and if bonds have been furnished as required the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted shall be submitted by Contractor to Engineer with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall constitute a waiver of claims.

14.10 - Waiver of Claims:

The making and acceptance of final payment will constitute:

- A. a waiver of all claims by City against Contractor, except claims arising from unsettled liens, from defective work appearing after final inspection pursuant to paragraph 14.07, from failure to comply with the contract documents or the terms of any special guarantees specified therein or from Contractor's continuing obligations under the contract documents; and
- B. A waiver of all claims by Contractor against Owner other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 - Owner May Suspend Work:

With cause, the Owner may suspend the Work or any portion thereof by notice in writing to Contractor and Owner which will fix the date on which work will be resumed. Contractor shall resume the work on the date so fixed.

Contractor may be allowed an adjustment in the contract price or an extension of the contract times, or both, directly attributable to any such suspension if Contractor makes an approved claim.

15.2 - Owner May Terminate:

Upon the occurrence of any one or more of the following events:

- A. If Contractor persistently fails to perform the work in accordance with the contract documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established.
- B. If Contractor disregards laws or regulations of any public body having jurisdiction;
- C. If Contractor disregards the authority of Engineer; or
- D. If Contractor otherwise violates in any substantial way any provisions of the contract documents;

City may, after giving Contractor (and the surety,) seven days written notice and to the extent permitted by Laws and Regulations, terminate the services of Contractor, exclude Contractor from the site and take possession of the work and of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the work all materials and equipment stored at the site or for which Owner has paid Contractor but which are stored elsewhere, and finish the work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds all costs, losses and damages sustained by City arising out of or resulting from completing the work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Contractor. If such costs, losses or damages exceed such unpaid balance, Contractor shall pay the difference to City. Such costs, losses or damages incurred by City will be reviewed by Engineer as to their reasonableness and when so approved by Engineer incorporated in a change order, provided that when exercising any rights or remedies under this paragraph City shall not be required to obtain the lowest price for the work performed.

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

Upon seven days written notice to Contractor and City may, elect to terminate the agreement. In such case, contractor shall be paid (without duplication of any items):

- A. For completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work;
- B. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the contract documents in connection with uncompleted work, plus fair and reasonable sums for overhead and profit on such expenses;
- C. For amounts paid in settlement of terminated contracts with subcontractors, suppliers and others (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration or other dispute resolution costs incurred in connection with termination of contractors with subcontractors and suppliers); and
- D. For reasonable expenses directly attributable to termination.

Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or any consequential damages arising out of such termination.

15.3 - Contractor May Stop Work or Terminate:

If through no act or fault of Contractor, the work is suspended for a period of more than ninety days by City or under an order of court or other public authority, or Engineer fails to act on any application for payment within forty-five days after it is submitted or City fails for thirty days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to City Engineer,

and provided City Engineer does not remedy such suspension or failure within that time, terminate the agreement and recover from City payment on the same terms as provided in paragraph 15.04. In lieu of terminating the agreement and without prejudice to any other right or remedy, if Engineer has failed to act on an application for payment within thirty days after it is submitted, or City has failed for thirty days to pay Contractor any sum finally determined to be due, Contractor may upon seven days written notice to City Engineer stop the work until payment of all such amounts due Contractor, including interest thereon. The provisions of this paragraph 15.05 are not intended to preclude Contractor from making claim for an adjustment in contract price or contract times or otherwise for expenses or damage directly attributable to Contractor's stopping work as permitted by this paragraph.

END OF SECTION 00700

SECTION 00800 - SUPPLEMENTARY GENERAL CONDITIONS

1. PART 1 - GENERAL

1.1. DESCRIPTION:

A. This section is intended as a supplement to the General Conditions of the contract in the following areas:

- (1) Insurance Coverage
 - (a) General Requirements for Insurance
 - (b) Commercial General Liability
 - (c) Motor Vehicle Liability
 - (d) Owner's & Contractors Protective Liability
 - (e) Additional Insured for the Project
 - (f) Property Damage Coverage
 - (g) Contractor's Pollution Liability
- (2) Proof of Insurance coverage
- (3) Payments for work as completed
- (4) Liquidated Damages
- (5) Safety and Protection

2. PART 2 - APPLICATION

2.1. GENERAL CONDITIONS, SECTION 3, INSURANCE:

A. GENERAL REQUIREMENTS

- (1) All coverages shall be with insurance carriers licensed and admitted to do business in the State of Michigan and acceptable to the City of Port Huron.
- (2) If any of the required coverages expire during the term of this Contract, the Contractor shall deliver renewal certificates and/or policies to the City of Port Huron at least ten (10) days prior to the expiration date.
- (3) Liability limits over \$1,000,000 per occurrence may be obtained by providing Excess Liability (Umbrella) coverage in addition to the General Liability Coverage.

B. SUBSECTION 3.05; COMMERCIAL GENERAL LIABILITY COVERAGE

- (1) The Contractor shall procure and maintain during the life of this Contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall

include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

- (2) Broad form property damage shall be included in the General Liability coverage.
- (3) Coverage shall include all damages which may be incurred as a result of the Contractor's operations including but not limited to sewer surcharging or backup.

C. SUBSECTION 3.06; MOTOR VEHICLE LIABILITY

- (1) The Contractor shall procure and maintain during the life of this Contract, Motor Vehicle Liability Insurance, including applicable No-Fault coverages with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

D. SUBSECTION 3.08; OWNER'S & CONTRACTORS PROTECTIVE LIABILITY

- (1) The Contractor shall procure and maintain during the life of this contract, a separate Owner's & Contractor's Protective Liability Policy with limits of liability not less than \$1,000,000 per occurrence and/or aggregate, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Port Huron shall be "Named insured" on said coverage. Sixty (60) days Notice of Cancellation shall apply to this policy.
- (2) As an alternative, a per project aggregate on the Commercial General Liability insurance policy may be an acceptable substitute to the OCP policy.

E. SUBSECTION 3.09; ADDITIONAL INSURED:

- (1) It is understood and agreed that the following shall be Additional Insured on the General Liability and Vehicle Liability Insurance Coverage:
 - (a) The City of Port Huron, Michigan
 - (b) All elected and appointed officials and volunteers,
 - (c) The employees of the City of Port Huron, Michigan,
 - (d) All Boards, commissions and/or authorities and their board members, employees and volunteers.
- (2) This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds whether other available coverage be primary, contributing or excess.

F. SUBSECTION 3.10; PROPERTY INSURANCE:

- (1) Broad form property damage shall be included in the General Liability coverage.
- (2) Coverage shall include all damages which may be incurred as a result of the Contractor's operations including but not limited to sewer surcharging or backup.

G. CONTRACTOR'S POLLUTION LIABILITY COVERAGE:

- (1) The Contractor shall procure and maintain coverage, for the duration of this contract, for pollution legal liability (Contractor's Pollution Liability) including investigation and legal defense, for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically damaged or destroyed. Such insurance shall provide coverage for both on site and off site clean-up costs and cover gradual and sudden pollution. Coverage shall be for minimum limits of \$1,000,000 per occurrence or claim and not less than \$1,000,000 annual aggregate. Coverage shall contain a per Contract aggregate endorsement. Sixty (60) days Notice of Cancellation shall apply to this policy.

2.2. GENERAL CONDITIONS, SECTION 4; PROOF OF INSURANCE COVERAGE:

- A. The Certificate Holder for proof of coverage shall be the City of Port Huron, Engineering Division.
- B. Workers Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance as described in the General Conditions and Supplementary General Conditions of the Contract shall include an endorsement stating the following: Sixty (60) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to:

Sara Montoya, P.E.
City of Port Huron, Engineering Division
100McMorran Boulevard
Port Huron, Michigan 48060

2.3. GENERAL CONDITIONS, SECTION 14; PAYMENTS FOR WORK COMPLETED:

- A. Payment may be made periodically through the life of the contract, but not more frequent than monthly intervals. Prior to executing a contract, the Contractor shall provide the Engineer a schedule of values, which after

acceptance by the Engineer, will be used as the basis for making progress payments. If payment is requested for materials not installed at the work site, the Contractor shall provide suitable documentation assuring the owner's interest and protection.

2.4. LIQUIDATED DAMAGES:

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the time(s) specified in Article 4 of the Agreement, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER five hundred dollars (\$500) for each day that expires after the time specified in the Article 4 Agreement until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER five hundred dollars (\$500) for each day that expires after the time specified in the Agreement for completion and readiness for final payment until the Work is completed and ready for final payment.

2.5. GENERAL CONDITIONS, SECTION 6.17; SAFETY AND PROTECTION:

- A. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- B. Any time the normal function of any roadway in the project area is suspended, by work operations, equipment or other means, the Contractor shall provide Traffic Control in conformance with the Michigan Manual of Uniform Traffic Control Devices. The Contractor shall be liable for all accidents and damages occasioned in any way by his acts or neglect, or by the acts or neglect of his Subcontractors, agents, employees, or workmen."

END OF SECTION 00800