

DIVISION 1

GENERAL CONDITIONS

- 1.01 Definitions: Whenever the following abbreviations, terms, or any pronouns are used in the specifications or any other contract documents, they shall have the following meanings:
- 1.01.01 A.A.S.H.T.O. – The American Association of State Highway and Transportation Officials.
- 1.01.02 A.E.D. – Associated Equipment Distributors.
- 1.01.03 A.N.S.I. – American National Standard Institute.
- 1.01.04 A.S.T.M. – The American Society for Testing Materials.
- 1.01.05 A.W.W.A. – The American Water Works Association.
- 1.01.06 Addenda (Addendum) – Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the Bidding Documents or the Contract.
- 1.01.07 Approved – Wherever in the Specifications or upon the plans the words “as order,” “as directed,” “as required,” “as permitted,” or words of like import are used, it shall be interpreted that the order, direction, requirement, or permission of the Engineer is intended; and similarly, the words “approved,” “acceptable,” or “satisfactory,” or words of like import shall mean approved by, or acceptable or satisfactory to the Engineer.
- 1.01.08 Bid – The written offer of the Bidder, on the Bid Form furnished by the City for the work proposed.
- 1.01.09 Bidder – The individual, partnership or corporation formally submitting a proposal for the work contemplated, or any portion thereof, acting directly or through an authorized representative.
- 1.01.10 Change Order – A document signed by Contractor and Engineer which authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the time of the Contract, issued on or after the effective date of the Contract.
- 1.01.11 City – The corporation of the City of Wyoming, Michigan.
- 1.01.12 Contract – The agreement covering the performance of the work in accordance with the construction drawings and as provided in the specifications. The contract includes the advertisement, information for bidders, proposal, bonds and insurance, all specifications, general and detailed construction drawings, agreements, all supplemental agreements, and all general or special provisions pertaining to the work or the materials therefore and all provisions required by law.

- 1.01.13 Contract Bond – The statutory bonds, executed by the Contractor and the Surety, guaranteeing performance of the contract and the payment of all lawful indebtedness pertaining thereto.
- 1.01.14 Contractor – The individual, partnership or corporation undertaking the execution of work under the terms of the contract and acting directly or through agents or employees.
- 1.01.15 Contractor's Prequalification - The classification and rating based on the Experience and Financial Statement of the Bidder.
- 1.01.16 Council – The duly elected Council members of the City of Wyoming, acting as a corporate body, or any officer duly authorized to act for the Council in any matter pertaining to a contract.
- 1.01.17 Engineer – The person holding the position or acting in the capacity of the City Engineer or his duly authorized representative.
- 1.01.18 Final Completion – The time at which the Work has been deemed to be totally completed and final payment has been authorized by the Engineer.
- 1.01.19 Inspector – The authorized representative of the Engineer, assigned to make detailed inspections of any or all portions of the work or the materials therefore.
- 1.01.20 Manager – The person holding the position or acting in the capacity of the City Manager, appointed by the City Council, or his duly authorized representative.
- 1.01.21 M.D.E.Q. – The Michigan Department of Environmental Quality
- 1.01.22 M.D.O.T. – The Michigan Department of Transportation.
- 1.01.23 MI.O.S.H.A. – The Michigan Occupational Safety and Health Administration.
- 1.01.24 M.M.U.T.C.D. – The Michigan Manual of Uniform Traffic Control Devices.
- 1.01.25 Laboratory – The testing laboratory of the City, or any other laboratory which may be designated by the Engineer to inspect and determine the suitability of materials.
- 1.01.26 Planimeter – For the estimating of quantities in which the computation of areas by geometric methods would be comparatively laborious, it is stipulated and agreed that the planimeter shall be considered an instrument of precision adapted to the measurement of such areas.
- 1.01.27 Progress Clause – That part of the contract pertaining to the order of proceeding with the various items of the work to be done and the rate of progress for completing said items of work.

- 1.01.28 Proposal – The written offer of the Bidder, on the form furnished by the City for the work proposed.
- 1.01.29 Proposal Guarantee – The security designated in the proposal and furnished by the Bidder as a guarantee of good faith to enter into a contract for the work proposed.
- 1.01.30 Special Specifications – Special requirements, regulations, or directions prepared to cover work on a particular project not satisfactorily provided by the Standard or Supplemental Specifications.
- 1.01.31 Standard Specifications – All requirements contained in this document of Standard Construction Specifications.
- 1.01.32 Subcontractor – The individual, partnership or corporation undertaking the execution of part of the work under the terms of the contract, by virtue of an agreement with the Contractor and with the consent of the City.
- 1.01.33 Substantial Completion – The Work (or specified part thereof) has progressed to the point where, in the opinion of the Engineer, it is sufficiently complete, in accordance with the Contract, so that the Work can be utilized for the purposes for which it is intended.
- 1.01.34 Supplemental Specifications – Detailed specifications which are supplemental to or which supersede any part of the Standard Specifications.
- 1.01.35 Surety – The corporate body which is bound with and for the Contractor for the performance of the contract and for the payment of all lawful indebtedness pertaining thereto.
- 1.01.36 Working Day – Working days shall be defined as Monday through Friday excluding holidays.
- 1.02 The City Charter:
- The City Charter and any superseding state statute or negotiation shall be the governing documents in all contractual relations with the City of Wyoming. Any apparent discrepancy in the text of any other contract documents, or in construction drawings, or in sketches, shall be interpreted, or construed, or set aside in favor of the specific provision or provisions of the City Charter, superseding state statute or regulation.
- 1.03 The Proposal:
- 1.03.01 Authority of the City Manager – It is provided that the City Manager or his duly authorized agent shall advertise for bids and that they shall be received, opened, and

tabulated by the Engineer, acting for and on behalf of the City Manager. After examining the bids, the Engineer shall report the same together with his recommendation to the Manager. The Manager shall then examine them, together with such report, and submit them with his own recommendation, to the City Council.

1.03.02 Contents of Proposal Form – Bidders will be supplied with proposal forms which will state the location and description of the work planned, the approximate quantities of the work to be performed and materials to be furnished, the amount of the proposal guarantee, and the date, time, and place of filing and opening bids.

1.03.03 Interpretation of Estimates – All estimated quantities stipulated in the Proposal or other contract documents are approximate and are to be used only (a) as a basis for estimating the probable cost of the work, and (b) for the purpose of comparing the proposals submitted for the work. It is understood and agreed that if the actual amounts differ from the estimated quantities, that the basis of payment for such work and materials shall be the actual amount of work done and materials furnished in each case. The Contractor agrees that he will make no claim for damages, anticipated profits, or otherwise on account of any difference between the amounts of work actually performed and materials actually furnished and the estimated amounts therefore.

1.03.04 Examination of Site by Bidders – Before submitting their proposals, the bidders shall examine the site of the proposed work as well as all the drawings and specifications. The bidder hereby agrees to accept full responsibility for his conclusions relative to the nature and probable difficulties of the work. Information made available by the City to the bidders, regarding underground conditions, such as test borings, is strictly informational and shall not be deemed 100% accurate or interpreted to encompass general conditions within the project limits. Said information shall not be construed as relieving the bidder of his obligations to make such supplementary or independent investigations as may be necessary or advisable.

The bidder hereby waives all claims for any damages which he may suffer by reason of the inadequacy or incompleteness of such underground information which the City has been able to obtain and furnish. Any estimate of earthwork quantities shall be considered as estimates and the Contractor shall make the determination as to the accuracy of the data. Any discrepancy shall be brought to the Engineer's attention immediately upon discovery.

The bidders shall also inform themselves of all the requirements of Federal, State, and Local laws and regulations which may affect the proper prosecution of the work.

1.03.05 Preparation of Proposal – The proposal shall be legibly prepared with ink or typed on the form provided. The bidder shall specify a unit price for each item in the proposal, and shall show the products of the respective quantities and unit prices in the column provided for that purpose, and the total sum for which he will perform the proposed work. Any proposal which does not contain a bid price for each item will be deemed incomplete and will not be considered, except when a lump sum bid is requested. When

the proposal provides for alternate bids, the bidder is not required to bid on more than one alternate for each item unless otherwise specified. Unsolicited alternate bids for any item will not be considered and should not be submitted, and if submitted, may cause the bid to be rejected.

Affirmative Action Statement must be signed for all contracts over \$10,000.

When there is no completion date or progress schedule incorporated in the proposal, each Bidder is required to write such information in the space provided on the proposal form.

The proposal shall be properly signed and the complete address of the bidder given thereon. If the Bidder is a corporation, the proposal shall be signed by its duly authorized officers and authority for the signatures shall be attached thereto or be on file with the City Clerk.

- 1.03.06 Proposal Guarantee – No bids will be considered unless there is enclosed a certified check or certificate of deposit payable to the Treasurer of the City of Wyoming in the sum of five (5%) percent of the proposal, but not less than Fifty Dollars (\$50), or a bid bond issued by an approved Surety Company on the form supplied by the City. The checks, or bid bonds, of the three lowest Bidders will be retained by the City Manager until the contract has been awarded and the checks of all other Bidders will be returned as soon as practicable. In the event that the award of contract is not made within sixty (60) days after opening of proposals, the bidder may withdraw the retained proposal guarantee without penalty or prejudice.
- 1.03.07 Delivery of Proposal – The proposal shall be submitted in a sealed envelope which shall be plainly marked with the same complete project designation shown on the title sheet of the proposal and with the name and address of the Bidder on the outside of the envelope. All proposals must be received by the City Clerk, acting for and on behalf of the City Manager, prior to the time and at the place indicated in the advertisement. More than one proposal for the same project from an individual, partnership, or corporation will not be considered.
- 1.03.08 Public Opening of Proposals – The proposals will be opened publicly and read aloud at the time and place specified in the advertisement. Only the total amount of each bid will be read. After checking all bids, the unit prices of the determined low bid will be publicly available.
- 1.03.09 Prequalification of Bidders – Bidders must be prequalified and capable of performing the various items of work on which they bid. All persons intending to bid on City work must file a sworn Experience and Financial Statement on a form satisfactory to the Manager. Such statement shall fully set forth the financial resources, adequacy of plant and equipment, organization, prior experience, and such other pertinent facts as may be desirable. Prospective Bidders must submit this statement once each year or more often if required by the Manager. Proposals will not be issued to or accepted from Bidders

who have not submitted such a statement and been prequalified to bid on the particular project.

A previous failure on the part of any Bidder to perform a contract satisfactorily or the lack of experience, equipment or capital necessary for the satisfactory completion of the work, will be sufficient cause for disqualification.

No contract will be awarded to any person, partnership or corporation which is in arrears to the City of Wyoming for taxes or any other claims.

1.03.10 Disqualifications for Bidders – No Contractor shall be permitted to submit a bid for any work for the City if said Contractor is in arrears to the City upon debt or contract, or who is defaulter as security or otherwise upon an obligation to the City, nor who shall in other respects be disqualified according to the provisions of the Code of the City of Wyoming or the Wyoming City Charter.

1.04 Award and Execution of Contract:

1.04.01 Consideration of Proposals – The proposals received will be compared on the basis of the summation of the products of the quantities of items listed and the unit prices bid. Where a discrepancy occurs, the unit prices as written in the proposal shall govern, and any errors found in said products, or in addition, will be corrected.

The right is reserved to reject any or all proposals, to waive technicalities, to advertise for new proposals, or to proceed to do the work otherwise, if in the judgment of the City Council, the best interest of the City will be promoted thereby.

1.04.02 Execution of Contract – Acceptance of the proposal of the successful bidder, and the rejection of the other proposals, will be made by the City Council as soon as practicable after receiving the recommendation of the City Manager. The Manager will transmit to the successful Bidder, at the address given on his proposal, contract and bond forms which shall be fully executed and returned to the City Manager within five (5) days of such transmission. In the event the contract is not executed by the City within the time limit set in the Information for Bidders, after opening of proposals, the successful Bidder shall have the right to withdraw his bid without penalty or prejudice.

1.04.03 Contract Bond and Irrevocable Letter of Credit Requirements:

(a) Contract Bond – The successful Bidder shall furnish satisfactory performance and lien bonds, each in an amount equal to the total contract price. Such bonds shall be on the forms provided by the City and shall conform to the regulations of the City and the requirements specified in the laws of Michigan.

(b) Letter of Credit – In addition to the above described bond requirements, the successful Bidder shall furnish an Irrevocable Letter of Credit from a state or

federally chartered lending institution satisfactory to the Engineer, with an office in Kent County, Michigan. Said Letter of Credit shall be submitted on the bank's letterhead, shall follow the format in the bidding documents, and will be included as part of the contract documents. Said Letter of Credit shall be in an amount equal to five percent (5%) of the awarded contract price and may be used by City in the event that the successful bidder fails to satisfactorily complete the project.

1.04.04 Insurance Requirements:

- (a) Worker's Compensation, Public Liability and Property Damage – The Contractor as successful bidder shall, prior to the execution of the contract, file with the City, certified copies of policies and adequate certificates pertaining thereto, with the project name and general description indicated, as evidence that he carries Worker's Compensation Insurance, and as proof of adequate insurance to protect the public and the City of Wyoming against public liability and property damage, and when specified by the City at the time of taking bids, similar insurance to protect the owner of the premises on/or near which construction operations are to be performed.

The furnishing by the Contractor of any insurance policies and insurance certificates required and their acceptance or approval by the City shall not release the Contractor from obligation to provide sufficient coverage as set forth herein and shall not waive liability of Contractor to indemnify the City against all damage as aforesaid.

The Contractor shall, and upon execution of the Contract, agree to assume all liability for and protect, indemnify and save the City, its agents, officers, and employees harmless from and against all actions, claims, demands, judgment, losses, expense of suits or actions and attorney fees for injuries to, or death of, any person or persons and loss of damage to the property of any person, or person, whomsoever, including the parties hereto, and their agents, Contractors, subcontractors, officers and employees, arising in connection with or as a direct or indirect result of entering into and performance of this contract, whether or not due to or arising out of the acts of either party hereto or its agents, Contractors, subcontractors, officers and employees, or by or in consequence of any negligence or carelessness in connection with the same or on account of liability or obligation imposed directly or indirectly upon said City by reason of any law of the State of Michigan or the United States, now existing or which shall hereinafter be enacted, imposing any liability or obligation, or providing for compensation to any person or persons on account of or arising from the death of, or injuries to employees. Said Contractor shall pay, settle, compromise, and procure the discharge of any and all such claims and all such losses, damages, and expenses.

The Contractor shall furnish to the City an Owner's Protective or Contingent Liability Policy written in the name of the City of Wyoming in the same amounts

as hereinafter specified for the Contractor's Public Liability and Property Damage.

The Contractor's Public Liability Insurance must be written on a comprehensive form to include subcontractors and shall provide for a limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injuries to, or death of one person, and subject to that limit for each person, a total limit of Two Million Dollars (\$2,000,000.00) for all damages arising out of bodily injuries to or death of two (2) or more persons in any one accident. The standard Contractor's property damage liability insurance shall provide for a limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of injuries to or destruction of property in any one accident and subject to the limit per accident, an aggregate limit of Two Million Dollars (\$2,000,000.00) for all damages arising out of injury to or destruction of property during the policy period.

The Contractor shall as part of the insurance coverage to be furnished, include specific coverage, by endorsement in the aforesaid amount for the so-called Explosion, Collapse, and Underground Hazards, which covers damage to property arising directly or indirectly from explosion damage or structural injury to building or adjacent structures arising from excavation or tunneling, and damage sustained by wires, conduits, mains and the like occasioned by the Contractor's sub-surface operation.

- (b) Contractor's Motor Vehicle Bodily Injury and Property Damage Insurance – The Contractor shall procure and shall maintain during the life of this contract, Motor Vehicle Bodily Injury Insurance (Comprehensive Form) in an amount not less than One Million Dollars (\$1,000,000.00 for bodily injuries, including accidental death, to each person; and in an amount not less than One Million Dollars (\$1,000,000.00) for each accident and Property Damage Liability in an amount not less than One Million Dollars (\$1,000,000,.00) for each accident.

The Contractor shall procure and shall maintain during the life of the contract Hired and Non- Ownership Motor Vehicle Bodily Injury and Property Damage Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for injuries, including accidental death to each person; and in an amount not less than One Million Dollars (\$1,000,000.00) for each accident, and Property Damage Liability in an amount not less than One Million Dollars (\$1,000,000.00) for each accident.

- (c) Builders Risk Insurance – When required in the proposal, the Contractor shall insure for the life of the contract against all loss or damage by fire at the site and against all loss or damage covered by the standard extended coverage insurance endorsement. The insurance policy shall be held jointly in the names of the City and the Contractor.

The amount of the policy may vary with the extent of the work completed, but shall at all times be at least equal to the amount paid on account of work and materials plus the value of work or materials furnished or delivered by the Contractor but not paid for by the City. Certificates of the insurance companies as to the amount and extent of coverage shall be delivered to the City before partial payments are made.

- (d) Notification of Cancellation – A guarantee that ten (10) days notice to the City prior to the cancellation of, or change in, any such insurance shall be endorsed on each policy and shall be noted on each certificate. If any of the insurance is cancelled, the Contractor shall cease operations on the date of termination and shall not resume operations until new insurance is in force.

1.04.05 Failure to Execute Contract – Failure on the part of the successful Bidder to execute a contract and file satisfactory bonds, as specified herein, may be considered cause for the annulment of the award and forfeiture of the proposal guarantee to the City.

1.04.06 Preconstruction Meeting – The Contractor shall, upon award of the Contract, arrange for a Preconstruction Meeting with the Engineer. At the Preconstruction Meeting the Contractor shall present to the Engineer a proposed work schedule for his approval. The meeting shall also serve to coordinate the Contractor's work with the utility companies. The Contractor shall present a list of equipment and labor costs for the project.

1.04.07 Delays – The City may require the Contractor to add to his plant, equipment, or construction forces, as well as increase the working hours, if operations fall behind the approved schedule to an extent that the completion of the work within the specified time appears doubtful.

The Contractor's attention is directed to the fact that he will have to accept the risk of any delays caused by the rate of progress of the work to be performed by others under other sections of the contract and that in the event he is delayed in the prosecution and completion of his work because the prosecution and completion of his work because of such conditions, he shall have no claim for damages or contract adjustment, other than to request an extension of time and the waiving of liquidated damages during the period of time occasioned by such delay.

1.05 Time:

In the performance of the work under each contract, time shall be deemed to be of the essence.

1.06 Permits and Licenses:

The Contractor shall procure all permits and licenses and pay all charges and fees necessarily incidental to the due and lawful prosecution of the work including a Soil Erosion Permit. The City will generally obtain M.D.E.Q. Permits unless otherwise specified. No specific payment will be made to the Contractor for obtaining permits.

1.07 Sanitary Provisions:

The Contractor shall comply with all rules and regulations of the State and local health officials, and must take such precautions as are necessary to avoid creating unsanitary conditions.

1.08 Safety and Convenience:

1.08.01 Public Safety and Convenience – The Contractor shall at all times so conduct his work as to insure the least possible obstruction to traffic. The safety and convenience of the general public and the residents along the street and the protection of persons and property shall be provided by the Contractor. The Contractor shall provide and maintain adequate barricades, signs, lights, and flags to warn and guide the public, and shall provide flagmen and watchmen when needed or when so ordered by the Engineer.

Unless otherwise specified, the street may for such periods as is necessary and approved by the Engineer be closed to all but local traffic during construction operations. The Contractor's work schedule submitted to the Engineer for approval as stated in No. 1.04.06 shall show when and for how long they intend to interfere with traffic. The Contractor shall also contact the City Engineer at least five (5) working days prior to commencement of work.

On those projects where the full width of the street is closed and the public is required to detour on other streets, the proper signage shall be placed to maintain adequate advance signing at nearby street intersections along the detour route per the M.U.T.C.D as modified by the City of Wyoming. The Contractor shall furnish and maintain adequate barricades, lights, and signs within the construction influence area.

When the excavation is transverse to the pavement, the Engineer may require the Contractor to make either a permanent repair or place temporary bituminous materials over the trench as soon as it is backfilled or maintain traffic by placing plates over the trench. The use of plates, requires they be securely fastened to the existing paved surface with traction welds or asphalt ramps.

1.08.02 Contractors' Safety – The Contractor shall comply with all Federal, State, and local laws and regulations governing the furnishing and use of all safeguards, safety devices, and protective equipment, and take any other needed actions as necessary to protect the life and health of employees on the job and the safety of the public and to protect property during the construction of the project.

The Contractor shall comply with the State of Michigan's "General Safety Rules and Regulations" for the construction industry (MIOSHA).

1.09 Guarantee:

The Contractor shall promptly repair, replace restore, or rebuild, as the Engineer may determine, any finished work in which defects of materials or workmanship may appear or to which damage may occur because of such defects during the one (1) year period subsequent to the date of acceptance except where other periods of maintenance and guarantee are provided.

The date of acceptance shall coincide with date of final payment.

All subcontractor's, manufacturer's, or supplier's warranties and guarantees, expressed or implied, respecting any material or equipment used in or a part of the work shall be deemed obtained by the Contractor as agent for the City, and all such warranties and guarantees shall insure to the benefit of the City without the necessity of separate transfer or assignment thereof; Provided: that if directed by the Engineer, the Contractor shall require such subcontractors, manufacturers, or suppliers to execute such warranties and guarantees in writing to the City.

Notice by the Engineer to the Contractor to repair, replace, rebuild or restore such defective or damaged work shall be timely if given not later than ten (10) days subsequent to the expiration of the one (1) year period or other periods provided herein.

In no event shall this section preclude the City of Wyoming from claiming damages for injuries to person or property caused by improper materials or work. The phrase "improper materials or work" shall include but not be limited to: those which are inherently dangerous, unfit for their particular purpose intended, unfit for the general purpose, or those which are improperly designed.

1.10 Protection and Restoration of Property:

- 1.10.01 Contractor to Restore Property – The Contractor shall restore, at their own expense, any public or private property damaged as a result of any act or omission on their part or on the part of their employees or agents, as directed by the Engineer, to a condition similar to and equal to that existing before such damage or injury was done. If the Contractor neglects to make such repairs or restoration, the Engineer may, (after providing notice to the Contractor) proceed to make such repairs or restoration, and will deduct the cost thereof from any monies that are or may become due the Contractor.

1.10.02 Railroad Crossing Protection – Whenever a line or pipe, or any other structure shall cross any railroad or lie close to any railroad track, all of the precautionary construction measures required by the railroad officials shall be performed by the Contractor.

1.10.03 Dust Control – The Contractor’s attention is particularly directed to the problem of control of dust, mud or other debris.

All dust resulting from hauling operations or construction operations shall be controlled by the application of water or other approved dust controller. Equipment capable of watering the surface area shall be kept within the project limits at all times unless waived upon discretion of the Engineer. Dust control shall be performed upon request of the Engineer or their representative within two (2) hours of said request.

If the Contractor fails to keep any street cleaned of mud or debris and free from dust resulting from his operations and thereby creates a public nuisance, he will be notified by the Engineer to clean the street and remove the nuisance immediately. If within twenty-four (24) hours after receipt of such notice, the Contractor fails to clean the street satisfactorily, the Engineer will arrange to have the street cleaned and all costs of such cleaning shall be paid by the Contractor.

1.10.04 Public Easement – The easement shown on the plans for the project have been secured by the City of Wyoming or other governmental units involved for the construction, maintenance or repair of the utility shown on the plans. When additional access rights have been acquired, they shall be described in the proposal.

These easements do not grant the City or the Contractor the unrestricted use of the properties adjacent thereto nor do they grant the City or other governmental units or the Contractor the right to disturb trees or landscaping or structures outside the easement areas.

1.11 Assignments:

The Contractor shall not assign, transfer, convey, or otherwise dispose of the contract or his right to execute it or his right, title, or interest to it or any part thereof, or assign any of the monies due or to become due under the contract, without the prior written consent of the Engineer.

1.12 Estoppel: (No waiver of legal rights by City)

The City or any officer, agent or employee thereof, shall not be estopped, bound or precluded by and determination, return, decision, approval, order, letter, payment or certificate made or given by the City Manager, or other officer, employee or agent of the municipality at any time, either before or after the final completion and acceptance of the work and payment therefore from: (1) showing the true and correct amount,

classification, quality and character of the work done and materials furnished by the Contractor or any other person under the contract, or from showing at any time that any determination, return, decision, approval, order, letter, payment or certificate is untrue and incorrect, and improperly made in any particular, or that the work or materials or any part thereof, do not in fact conform to the specifications, and (2) from demanding and recovering from the Contractor any overpayments made to him, or such damages as it may sustain by reason of his failure to perform each and every part of the contract in strict accordance with its terms, or both.

1.13 Unlawful Provision:

All unlawful provisions shall be deemed stricken from the contract and shall be of no effect. Upon the application of either party, the unlawful parts shall be considered stricken without affecting the binding force of the remainder of the contract.

1.14 Patents:

The Contractor shall pay all royalties and license fees and shall hold and safe the City, its officers, agents, servants and employees harmless from liability of any nature and kind, including costs and expenses for or on account of any patented or unpatented invention, process, article or appliance manufactures or used in the performance of the contract, including its use by the City. In this respect, the Contractor shall defend all suits or claims for infringement of any patent or license rights.

1.15 Street Monuments:

Street monuments and land monuments shall not be disturbed by the construction operations except as directed by the Engineer. When street monuments occur within the area of a concrete base or pavement, they shall be preserved as provided in the current M.D.O.T. Standard Specification.

1.16 City Datum:

The figures appearing after the word “elevation” or an abbreviation thereof, in the contract and specifications and plans shall mean the distance in feet above the official datum adopted by the City. The official datum is mean sea level, as determined by the United States Geological Survey.

1.17 Water:

The use of water in reasonable and adequate amounts for inundation or settling of backfill material or for any other use as may be required for proper completion of the work to be performed will be furnished at existing fire hydrants by the City without charge to the Contractor, if and provided City water is readily available at the site or sites of work. Prior to any connection to any City hydrant, a City issued back-flow preventor must be installed. The Contractor may pick up a City back-flow preventor at the Public Works Inventory when working on a City project. Where City water is not readily available, in the opinion of the Engineer, all water required for in connection with the work to be performed shall be provided by and at the expense of the Contractor. No separate payment for water used or required will be made and all costs in connection therewith shall be included in the various proposal items requiring the use thereof.

Where water is provided by the City, the Contractor shall furnish all necessary pipe, hose, nozzles and tools except hydrant connections and shall perform all necessary labor for and in connection with the conveyance and application of the water used. The Contractor shall make arrangements with the Director of Public Works' designee (who will fix the time, rate, and duration of each withdrawal from the distribution system) as to the amount of water required and the time when such water will be needed. Unnecessary waste of water so furnished will not be tolerated. Special hydrant wrenches shall be used for opening and closing fire hydrants. In no case shall pipe wrenches be used for this purpose. In all cases, water received via a hydrant shall have the City back-flow prevention device in place prior to use or be subjected to applicable fines.

1.18 Power:

All power for lighting, operation of the Contractor's plant or equipment, or for any other use by the Contractor shall be provided by the Contractor at his sole cost and expense.

1.19 Contractor's Office:

1.19.01 Place of office – The Contractor shall maintain an office at or near the site of the work, or at some regularly appointed place of business within the City. He shall keep on file in this office copies of the plans and specifications. The date of delivery of written notices from the City left at the office shall constitute and become the date of Contractor's notification.

1.19.02 Office for Engineer- The Contractor shall furnish and maintain an office for the exclusive use of the Engineer in making field tests or as a field office, for use at concrete batching plant, asphalt plant, or other large project, if so ordered by the Engineer. The building shall be suitably heated and lighted, and where feasible, a telephone shall be installed as directed.

1.20 Construction Stakes:

Construction stakes will be furnished as required for the project by the City of Wyoming or their representative. The Contractor shall give forty-eight (48) hours notice when requesting stakes. Any irregularity in grade stakes discovered by the Contractor shall be corrected before proceeding with the work.

The Contractor shall exercise proper care in the preservation of all stakes set for his use or the use of the Engineer and if such stakes are damaged, lost or removed by the Contractor's operations, the actual cost of restaking shall be charged to the Contractor.

The construction stakes shall be left in place until each phase of the work has been completed and inspected. In the event there are discrepancies in the location or grade of the work, the Contractor shall be responsible for making the necessary corrections at no cost to the City unless grade stakes are left in place that show evidence of an error in staking.

1.21 Personnel and Equipment:

The Contractor shall employ only competent and efficient personnel, and whenever, in the opinion of the Engineer, any employee is careless, incompetent, dishonest, obstructs the progress of the work, acts contrary to instructions, or conducts himself improperly, the Contractor shall, upon direction of the Engineer, discharge or otherwise remove such employee from the work and shall not employ them again thereon.

The working force, methods, equipment and appliances used on the work shall be such as will produce a satisfactory quality of work and shall be adequate to complete the contract within the time limit specified.

1.22 Sub-Contracting or Sub-Letting:

1.22.01 Items on Which Sub-Letting May be Permitted - Unless otherwise provided in the proposal, the Contractor shall perform (with their own organization and with the assistance of workers under their immediate superintendence) not less than fifty percent (50%) of all work embraced in the contract in terms of dollar value unless prior approval is received from the Engineer.

1.22.02 Permission - The Contractor shall not sub-let or assign any portion of the contract without the written consent of the Engineer. Consent of the Engineer will only be given on written request by the Contractor. Such consent shall not relieve the Contractor from full responsibility for the performance of the contract. The authority thus exercised by the Engineer shall be construed as having been delegated to him by the Manager and he is acting on behalf of the Manager.

1.22.03 Subcontractors to Prequalify – Approval of the sub-letting of any portion of the contract will not be granted unless and until the Sub-contractor is prequalified to bid on work of the type and magnitude proposed. A list of prequalified concrete Contractors can be obtained from the office of the City Engineer.

1.23 Authority of the Engineer:

The Engineer shall decide all questions which may arise as to the quality and acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the work; all questions which may arise as to the interpretation of the plans and specifications; and all questions as to the satisfactory and acceptable fulfillment of the terms of the contract. The City reserves the right to make minor technical changes in the design, when such changes would provide better construction, the judgment of the Engineer, and would not incur additional expense for the Contractor. The authority thus exercised by the Engineer shall be construed as having been delegated to him by the Manager and that he is acting on behalf of the Manger.

1.24 Coordination of Specifications and Plans – The intent of the plans and specifications is to provide for the completion of the work in every detail, as shown thereon and as described herein.

1.24.01 Order of Precedence – In case of discrepancy between plans and specifications, the following order of precedence shall be used:

- Contract/Purchase Order
- Proposal
- Special Conditions
- Instructions to Bidders
- General Conditions
- Supplementary Specifications
- Drawings
- Standard Specifications
- Prequalification Documents

Figure dimensions on Drawings shall take precedence over scale dimensions. Detailed Drawings shall take precedence over general drawings.

1.25 Inspections:

The Engineer and his representatives shall be allowed 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 a complete and detailed inspection. Such inspection may include mill, plant or shop inspection of materials and workmanship.

Scales and weighing equipment may be inspected at any time by the City. Claims by the Contractor for delays or inconvenience due to these operations will not be considered.

1.26 Authority and Duties of Inspectors:

The inspectors will not be authorized to revoke, alter, enlarge or relax any of these specifications nor to change the plans in any particular. The inspectors may be authorized to increase or decrease any minor contract item.

The inspector on the project will inform the Engineer as to the progress of the work, the manner in which it is being done, and the quality of the materials being used. They will also call to the attention of the Contractor any failure to follow the plans specifications that they may observe. They shall have authority to prevent any material being used, and to stop any work being done which he believes does not conform to the plans and specifications, until the Engineer shall have the opportunity to inspect the material of work. In no instance shall any action or omission on the part of the inspector relieve the Contractor of the responsibility of completing the work in accordance with the plans and specifications.

1.27 Authorized Extras or Changes in Work – The City shall have the right under the contract to make increases and decreases in quantities and changes in the plans, in the character of the work, and the terminus of the project, as may be necessary or desirable to insure completion of the work in the most satisfactory manner.

1.27.01 Changes in Quantities – No adjustment in unit prices will be considered for any increased or decreased contract quantities unless the character of the work has changed.

1.27.02 Altered Character of Work – When additional work has been authorized but the character of the work has substantially changed new unit prices may be negotiated as outlined 1.27.03.

1.27.03 Extra Work – The amount to be paid to the Contractor for work and materials not specified in the contract shall be determined by one or more of the following methods, the City reserving the right to select the method or methods at the time the change in the work is ordered:

- (a) By an acceptable lump sum proposal. All lump sum proposals shall be itemized and all quantities and unit prices shall be given, as well as the total amount.
- (b) By unit prices. These unit prices may be those in the original proposal, or fixed by subsequent agreement.

- (c) By force account. All work done on a force account basis will be paid for in the following manner:

For all labor and supervisors in direct charge of the specific work, the Contractor shall receive the actual rate of wage paid for each hour that said labor and supervisors are actually engaged in such work, plus twenty-six percent (26%) of the sum thereof.

For materials and supplies, the Contractor shall receive the actual cost of such materials delivered on the site of the work, including freight charges, as shown by original receipted bills, plus twenty percent (20%) of the sum thereof.

For any machinery and equipment owned by the Contractor, which it may be deemed necessary or desirable to use on force account work, the Contractor shall be paid an ownership expense price computed on the average cost of this equipment to local construction companies, as determined by the City, for the period that said machinery and equipment is actually on such work, plus twenty percent (20%) of the sum thereof.

When it is necessary for the Contractor to rent equipment in the performance of force account work, he shall be allowed the actual rental price paid, if reasonable, for each and every hour that such equipment is used on the work, to which sum twenty percent (20%) will be added. The Contractor will be required to furnish receipted bills to cover such rental.

Bond premium, Workmen's Compensation Insurance, Personal Injury Public Liability, and Property Damage Public Liability Insurance, Unemployment Compensation, and Federal Social Security, shall be paid for at actual cost, to which sum twenty percent (20%) will be added. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such insurance.

The compensation as herein provided shall be accepted by the Contractor as payment in full for work done by force account and the said percentages shall cover profit, superintendence, general expense, overhead and use of small tools and equipment for which no rental is allowed. The Contractor and the Engineer shall compare records of force account work and shall bring them into agreement at the end of each day.

Where an item has been identified on the plans or in the specifications to be constructed and no pay item has been established, the cost of said item shall be included in the cost of the other items.

- 1.27.04 Deleting Items – The Engineer shall have the right at any time to delete the performance or completion of any contract item. A fair and equitable amount, representing all cost incurred on such items prior to such deletion, shall be agreed upon in writing and paid to the Contractor.

1.28 Partial Payments:

Partial payments will be made bi-weekly on the basis of one hundred percent (100%) of the value of the work performed including authorized extras and changes, subject to the following provisions:

- (a) The Contractor has furnished an Irrevocable Letter of Credit from a state or federally chartered lending institution.
- (b) The work is progressing to the satisfaction of the Engineer.
- (c) The orders of the Engineer have been fulfilled.
- (d) The time for completion shall not have expired.
- (e) That not less than Five Hundred Dollars (\$500.00) has been earned during the month.

By accepting payment, the Contractor declares that he has not, during the period of time he is accepting payment for, performed any work, furnished any material, sustained any loss, damage or delay, or otherwise done anything for which the Contractor shall ask, demand, sue for, or claim compensation from the City of Wyoming in addition to the regular item as set forth in the contract executed between the Contractor and the City of Wyoming and the extra work as agreed to in writing between the Contractor and the City of Wyoming except as the Contractor has filed a written claim with the City Engineer and as acknowledged by the City Engineer prior to the Contractor's acceptance of said payment.

The Letter of Credit may be deleted if the City retains ten percent (10%) of the amount owed the Contractor, and there are no more than three (3) payments including the final payment.

1.29 Final Inspection:

The Engineer shall make inspection of all work included in the contract, or such portions thereof which are eligible for acceptance as soon as possible after notification by the Contractor that the work is completed. If the work is not acceptable to the Engineer at the time of such inspection, he shall inform the Contractor orally or in writing as to the particular defects to be remedied before final inspection.

1.30 Acceptance and Final Payment:

The work has been completed and the Engineer has ascertained that each and every part of the work has been performed in accordance with the plans and specifications or such modifications thereof has have been approved, the same will be accepted and the Engineer will make a final estimate as soon as practicable, and the total amount due the Contractor, less the total amount of all previous payments will be paid.

Final payment will not be made until the Contractor has filed with the City the consent of the surety to payment of the final estimate and satisfactory evidence by affidavit or otherwise that all his indebtedness by reason of the contract has been fully paid or satisfactorily secured. In case such evidence is not furnished, the Engineer may retain out of any amount due said Contractor sums sufficient to cover all lienable claims unpaid.

Following the acceptance by the Contractor or by anyone claiming by or through him of the final payment, whether such payment be made pursuant to any judgment of any court or otherwise, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor for anything theretofore done or furnished for or relating to or arising out of the contract, and the work done thereunder, and for any prior act, neglect or default on the part of the City or any of its officers, agents, or employees, excepting only a claim against the City for the amount deducted or retained in accordance with the terms and provisions of the contract.

1.31 Defective Materials and Work:

All materials which do not meet the requirements of the specifications at the times they are to be used, will be rejected, and unless otherwise permitted by the Engineer, shall be removed immediately from the work.

Any defective work that may be found before the final acceptance of the work shall be corrected and replaced immediately as directed by the Engineer.

The Contractor shall be responsible for any and all damages that the work may sustain prior to its acceptance, and shall rebuild, repair, restore and make good at his own expense, all injuries and damages to any portion of the work by the action of the elements or from any cause whatsoever prior to its acceptance.

1.32 Temporary Suspension of Work:

The Engineer or their representative shall have the authority to suspend the work wholly or in part, for such period or periods as he may deem necessary, due to unsuitable weather or such other conditions as are considered unfavorable for the prosecution of the work. The Contractor shall not suspend the work or remove there from equipment or materials without permission from the Engineer.

Upon suspension, the work shall be put in proper and satisfactory condition, carefully covered and adequately protected, as directed by the Engineer. In all cases of suspension of construction operations, the work shall not again be resumed until permitted by the Engineer. Claims by the Contractor for delays or inconvenience due to such temporary suspension will not be considered.

1.33

Extension of Time:

If the Contractor finds that it will be impossible for him to complete the work on or before the completion date fixed by the contract, he shall, at least ten (10) days prior to said date, make written request to the Engineer for an extension of time for completion of the work. He shall set forth fully therein the reasons which he believes would justify the Engineer in granting his request and shall also set forth a revised completion date which will provide sufficient additional time for the completion of the work.

Upon receipt of such written request from the Contractor, if the Engineer finds that the work was delayed on account of conditions beyond control of the Contractor, or that the quantities of work done are sufficiently in excess of the estimated quantities to warrant additional time, he will, with or without notice to the surety, grant an extension of time, in writing, to such date as appears to him to be reasonable and proper. This date shall thereafter be as binding upon the Contractor and surety as if it appeared in the contract originally.

When such extension of time, or any part thereof, is granted for the purpose of completing the work of one or more of the original contract items which, in the judgment of the Engineer, could have been completed prior to the original completion date, and when the completion of such original contract items required additional expense of inspection, Engineering or other services, the City reserves the right to deduct such expense from any monies to be paid the Contractor for the said original contract items which were completed after the original completion date. In no case shall the extension of time constitute additional appurtenant increase requests for items of Traffic Control Devices, Mobilization, etc.

Current estimates of monies earned by the Contractor will not be paid to the Contractor unless the contract contains a completion date which is not in default at the time such estimates are due, but the current and final estimate, if otherwise proper, may be paid after contract completion date, if all items of work for which specific payments are provided in the contract have been finished prior to said completion date.

If an extension of time is not granted, the Contractor's right to proceed with the work under the contract may be considered forfeited as of the date for completion originally provided in the contract, or as previously extended, and the City may proceed immediately to take over the work and the materials found thereon and make final settlement of costs incurred as provided under Termination of Contract, (Section 1.34),

except that in such case it shall not be necessary to give the Contractor the ten day written notice of such forfeiture.

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

1.34 Termination of Contract:

If the Contractor shall be prosecuting the work with force, equipment or materials insufficient to complete the work by the date set for completion; or shall be performing the work improperly; or shall discontinue the performance of the work; or shall neglect or refuse to remove such materials or to perform any such work as shall have been rejected as defective and unsuitable; or shall, for any reasons, not carry on the work in accordance with the contract; the Engineer may give the Contractor and surety written notice, specifying the delay, neglect or default, and the action to be taken by them; and if the Contractor or surety, within a period of ten days after such notice, shall not proceed satisfactorily in accordance therewith, then the City shall have full power and authority to take the work out of the hands of the Contractor and surety; to appropriate and use any and all materials on the jobsite which may be suitable; or to enter into contract, or use such other methods as in the City's judgment, may be required for the proper completion of the work. If the Contractor commits any act of bankruptcy, or becomes insolvent or is declared bankrupt; if he allows any final judgment against him to remain unsatisfied for a period of five days; or, if he shall make an assignment for the benefit of his creditors; then in such case, the City shall have full power and authority to proceed in any of the ways aforesaid, forthwith upon the delivery by the Engineer to the Contractor and surety of written notice stating the reasons for said action.

In case the City takes over the uncompleted work under any of the provisions of this section, all additional costs and damages, and costs and charges of completing the work shall be deducted from monies due or to become due the Contractor; and if the total of such damages, costs and charges exceeds the balance of the contract price which would have been payable to the Contractor had he completed the work, then the Contractor and surety shall, on demand, pay to the City the amount of such excess.

1.35 Cooperation by Contractor:

The Contractor shall conduct his operations so as to interfere as little as possible with those of other Contractors, utilities, or any public authority on or near the work shown on the plans or in the proposal.

The Contractor shall adjust his schedule when necessary and cooperate with other Contractors to the best interest of the City, as determined by the Engineer.

No claims for extra compensation or adjustments in the contract price will be made on account of delay or failure or others to complete work units as scheduled.

1.36 Other Remedies:

The previous provisions outlined shall be in addition to any and all other legal remedies permissible in the premises.

1.37 General Safety Requirements:

1.37.01 Emergency Vehicles – shall have access to within 150 feet of all properties at all times. Such access shall be maintained by the Contractor.

1.37.02 Fire Equipment – such as fire alarm boxes, water valves, and fire hydrants shall be kept accessible for immediate use at all time by the Contractor.

1.37.03 Traffic Maintenance – the Contractor shall conduct his work so as to interfere as little as possible with public travel, whether vehicular or pedestrian. Whenever it is necessary to cross, obstruct, or close roads, driveways, and walks, whether public or private, the Contractor shall at his own expense provide and maintain suitable and safe bridges, detours, or other temporary expedients for the accommodation of public and private travel, and shall give reasonable notice to owners of private drives before interfering with them; provided, however, that such maintenance of traffic will not be required at any point where the Contractor has obtained permission from the owner and tenant of private property, or from the authority having jurisdiction over public property involved, to obstruct traffic any designated point. (Refer to Wyoming Traffic Control Pamphlet.)

In making open cut street crossings, the Contractor shall not block more than one-half of the street at a time. Wherever possible the Contractor shall widen the shoulder on the opposite side to facilitate traffic flow. Temporary surfacing shall be provided as necessary on shoulders. The cost of said temporary surfacing shall be incidental to the major items of work.

Substantially constructed bridges shall be constructed by, and at the expense of, the Contractor at all points where it is necessary to maintain traffic across pipeline construction. Bridges shall be adequate for the service to which they will be subjected and shall be approved by the Engineer.

Bridges shall be provided with substantial guard rails and with suitable protected approaches. Foot bridges shall be not less than four feet wide, provided with handrails and uprights of dressed lumber. Bridges shall be maintained in place as long as the conditions of the work require their use for safety of the public, except that when necessary for the proper prosecution of the work in the immediate vicinity of a bridge, the

bridge may be relocated or it may be temporarily removed, for such period as the Engineer may permit.

1.37.04

Barricades and Lights – All streets, roads, highways, and other public thoroughfares which are subject to maintenance or construction activities, under the authority of a proper permit, shall be protected by means of effective barricades, flagmen, detour, or other necessary signs. Barricades shall be located at the nearest intersecting public highway or street on each side of the blocked section.

All open trenches and other excavations shall be provided with suitable barriers, signs and lights to the extent that adequate protection is provided to the public against accident by reason of such open construction. Obstructions, such as material piles and equipment, shall be provided with similar warning signs and lights.

All barricades shall be illuminated by means of warning lights at night and all lights used for this purpose shall be kept burning from sunset to sunrise. Materials stored upon or alongside public streets and highways shall be so placed, and the work at all times shall be so conducted, as to cause the minimum obstruction and inconvenience to the traveling public.

All barricades, signs, lights, and other protective devices shall be installed and maintained in conformity with applicable statutory requirements and where within railroad and highway rights-or-way, as required by the authority having jurisdiction thereof.

It is the intent of the contract that the Contractor shall be responsible for the following items during the construction period and that such work shall be performed in a manner acceptable to the Engineer:

Barricades, warning lights, flagmen, detour and other necessary signs;

Dust control, including calcium chloride application when required by the Engineer;

Maintenance of roadways including necessary temporary gravel and grading to permit reasonable traffic flow.

Furnishing of all materials, equipment, and labor to accomplish these items, shall be considered incidental to the major items of the contract and no specific payment will be made therefore, unless otherwise specified.

1.37.05

Safety Laws and Ordinances – All construction safety requirements of O.S.H.A. and any special safety requirement of the City shall be adhered to at all times. The Contractor shall conduct his operation so as to provide the best possible safety to City employees, Contractor's employees, and the general public at all times.

- 1.37.06 Plans and Specs on Jobsite – The Contractor and subcontractors shall have a minimum of one set of plans and specs on the jobsite at all times when work is in progress. Failure to comply with this requirement will be reason for suspension of all work activities.

No claims for extra compensation or adjustments in the contract price will be made on account of the failure of the Contractor or subcontractors to comply with this section of the specs.

- 1.37.07 Traffic Control Devices – Contractor shall conform with all requirements of the Manual of Uniform Traffic Control Devices.

- 1.37.08 Removal of Traffic Signs – All non-essential traffic signs (street name signs, parking signs, etc.) will be removed by City Forces. All regulatory signs (stop, yield, speed limit) will be left in place. When removal of these signs becomes necessary, the Contractor shall inform the Engineer or their representative and the sign will be removed by City forces; any such signs removed shall be reinstalled immediately upon completing the work which required the sign(s) removal. If the Contractor removes or damages any sign within the project limits, the City will replace said sign and charge the cost of said replacement to the Contractor.

This work shall be included in the Minor Traffic Devices pay item.

- 1.38 Work Days/Hours or Work:

No work shall be performed on any Sunday or City of Wyoming Holidays. Engineer may allow Contractor to work on a City of Wyoming Holiday when determined it is in the best interest of the City.

During the working days, the Contractor shall limit his activity to between the hours of 7:00 a.m. and 5:30 p.m. Any change beyond those hours established herein shall first have been reviewed and approved by the Engineer.

- 1.39 Incidental Work:

Any work called out on the plans but for which there is no specific pay item in the proposal shall be considered incidental to the Contract.

- 1.40 Video Record:

The Contractor shall furnish the City with a video record of the entire project. The video record shall be professionally produced prior to the start of construction and upon completion of all work. It shall include the following:

- (a) One DVD master;
- (b) One VHS copy of the master tape;
- (c) Numbers on screen at all times indicating date and time of recording;
- (d) Narration identifying location, direction and description of onscreen subjects;
- (e) Onscreen recording of all adjacent properties and special features;
- (f) Onscreen recording along project centerline (horizontal view); and
- (g) Onscreen recording of each project plan sheet.
- (h) Video inspection of all new Sanitary Sewer and Storm Sewer installations.

The cost of all materials, labor, and equipment required to furnish the video record shall be included in the major contract items.

1.41

Paint Markings

The Contractor shall remove all paint markings placed on concrete or asphalt surfaces to aide in construction (not associated with Miss Dig Utility staking operations).

Payment for this work shall be included in the major items of work unless a specific pay item is included in the contract. This work must be complete prior to final payment.