

BID# 19-064B

MATANUSKA-SUSITNA BOROUGH PURCHASING DIVISION

PALMER, ALASKA



BIDDING AND CONTRACT DOCUMENTS FOR

PALMER POOL IMPROVEMENTS

OPENING DATE & TIME: Thursday, February 28, 2019 @ 3:00 PM

TABLE OF CONTENTS

SECTION I

ADVERTISEMENT

SECTION II

INSTRUCTIONS TO BIDDERS

SECTION III

SCOPE OF WORK

SECTION IV

BID FORM

SECTION V

SAMPLE AGREEMENT

SECTION VI

GENERAL CONDITIONS

SECTION VII

SUPPLEMENTARY CONDITIONS

SECTION VIII – FORMS & DOCUMENTS

BID BOND

SUB CONTRACTOR/SUPPLIER LIST

PAYMENT BOND

PERFORMANCE BOND

CONSENT OF SURETY TO FINAL PAYMENT

CONTRACTOR'S RELEASE AND AFFIDAVIT OF PAYMENTS OF DEBTS AND CLAIMS

FIELD MEMO

SECTION IX

NOTICE TO CONTRACTORS STATE OF ALASKA DEPARTMENT OF LABOR FORMS AND PUBLICATIONS

SECTION X

ATTACHMENTS

SECTION I

ADVERTISEMENT

MATANUSKA-SUSITNA BOROUGH
350 East Dahlia
Palmer, Alaska 99645

ADVERTISEMENT

VENDOR	ACCOUNT #	DATE FOR ADVERTISEMENT
Anchorage Daily News	MATA 0070	Tuesday, January 29, 2019
Frontiersman	CONTRACT	Friday, February 1, 2019
TYPE OF AD:	() Display (X) Classified	() Public Information

The material herein must be printed in its entirety on the dates shown above. Affidavit of publication is required prior to payment.

MATANUSKA-SUSITNA BOROUGH
BID #19-064B

Palmer Pool Improvements

The Matanuska-Susitna Borough (MSB) is requesting bids from interested qualified contractors to construct improvements to the existing Palmer Pool facility as described in the solicitation & construction documents.

Bid documents are available to download for free beginning **Tuesday, January 29, 2019** from the MSB Purchasing Division's website, at <https://www.matsugov.us/contractopportunities>. For more information call (907) 861-8601, Fax (907) 861-8617, or e-mail purchasing@matsugov.us.

Pre-bid: **Thursday, February 7, 2019 at 9:30 AM on site at the Palmer Pool.**

Deadline for Questions: **Thursday, February 21, 2019 at 5:00 PM**

Bids open: **Thursday, February 28, 2019 at 3:00 PM in the Purchasing Division**

Bids must be received in the Purchasing Division prior to the time fixed for opening of the bids to be considered. Time of receipt will be determined by the time stamp in the Purchasing Division.

Persons needing accommodation in order to participate should contact the borough ADA coordinator at (907) 861-8404.

The Matanuska-Susitna Borough reserves the right to accept or reject any or all bids, waive any and all technicalities or informalities it deems appropriate. Award of this project is subject to the availability of funding.

Page 1 of 1	Approved by: Signature on File
-------------	---------------------------------------

SECTION II

INSTRUCTIONS TO BIDDERS

BID # 19-064B

PALMER POOL IMPROVEMENTS

INSTRUCTIONS TO BIDDERS

ARTICLE 1 - DEFINITIONS

1.1 Bidding Documents include the Advertisement or Invitation to Bid, Instructions to Bidders, bid form, other sample bidding and contract forms, proposed Contract Documents, including any Addenda issued prior to receipt of bids and bond forms. Contract Documents proposed for the work consist of the Borough-Contractor Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract.

1.2 All definitions set forth in the General Conditions of the Construction Agreement or in other Contract Documents are applicable to the Bidding Documents.

1.3 Addenda are written or graphic instruments issued by the Borough prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications, or corrections.

1.4 A Bid is a complete and properly signed proposal to do the work or designated portion thereof for the sums stipulated therein, submitted in accordance with the Bidding Documents.

1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the work described in the Bidding Documents as the base, to which work may be added, or from which work may be deleted for sums stated in Alternate Bids.

1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid, if the corresponding change in the work, as described in the Bidding Documents, is accepted.

1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials or services, as described in the Bidding Documents or in the proposed Contract Documents.

1.8 A Bidder is a person or entity who submits a Bid.

1.9 A Sub-bidder is a person or entity who submits a Bid to a Bidder for materials or labor for a portion of the work.

1.10 Any interested party submitting a bid/proposal on Matanuska-Susitna Borough (MSB) projects should first review the MSB Debarment/Suspension List. This listing is available on the MSB web page under Economy and Bids. Any submission of a bid/proposal, with participation or involvement of an individual, company, firm or corporation on this list will render the bid/proposal as non-responsible.

ARTICLE 2 - BIDDER'S REPRESENTATIONS

2.1 Each Bidder by making a Bid represents that:

2.1.1 The Bidder has read and understands the Bidding Documents and the Bidder's Bid is made in accordance therewith.

2.1.2 The bidder has visited the site and has taken other steps as may be necessary to ascertain the nature and local conditions of the work, the general and local conditions which could affect the work or costs thereof. Failure to do so will not relieve Bidders of responsibility for estimating properly or the difficulty or cost of successfully performing the work. The submission of a Bid shall be an admission that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements and accuracy of the Bidding Documents.

2.1.3 The Borough assumes no responsibility for any understanding or representations concerning conditions made by any of its officers, agents, or employees prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Bidding Documents or Addenda.

2.1.4 The Bidder shall include in their Bid sums sufficient to cover all items required by the Contract and the conditions of the site(s), and shall rely entirely upon their own examination in making their Bid. The submission of a Bid shall be taken as a prima facie evidence of compliance with this paragraph.

2.1.5 The Bidder's Bid is based upon the materials, systems, and equipment required by the Bidding Documents without exception.

ARTICLE 3 - BIDDING DOCUMENTS

3.1 Copies

3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office's webpage as designated in the Advertisement or Invitation to Bid.

3.1.2 Bidders shall use complete sets of Bidding Documents in preparing Bids; the Borough does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents. If material required for bidding purposes by these documents is absent, the Bidder is required to notify the Purchasing Officer.

3.1.3 The Borough in making electronic copies of the Bidding Documents available on the above terms does so only for the purpose of obtaining Bids on the work, and does not confer a license of grant for any other use.

3.2 Interpretation or Correction of Bidding Documents

3.2.1 Bidders and Sub-bidders shall promptly notify the Purchasing Officer by fax at 861-8617, or by e-mail at purchasing@matsugov.us of any ambiguity, inconsistency, or error which they may discover upon examination of the Bidding Documents or of the site and local conditions.

3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Purchasing Officer at least five work days prior to the date for receipt of Bids. Questions or requests for clarifications shall be directed to the borough's Purchasing Officer at purchasing@matsugov.us. Questions or requests for clarification directed to any other member of the borough staff, or consultant may be grounds for rejection of bid as being irregular

3.2.3 Any interpretation, correction, or change of the Bidding Documents will be made by Addendum. Interpretations, corrections, or changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon such interpretations, corrections, and changes.

3.3 Addenda

3.3.1 Addenda will be posted on the Borough's Purchasing webpage, notice will be emailed to all known by the Purchasing Division to have requested to be added to a plan holders list for the solicitation.

3.3.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

3.3.3 No Addenda will be issued later than four days prior to the date for receipt of Bids, except an Addendum withdrawing the request for Bids, or one which includes postponement of the date for receipt of Bids.

3.3.4 Each Bidder shall be responsible for ascertaining prior to submitting their Bid that they have received all Addenda issued, and they shall acknowledge their receipt in their Bid.

ARTICLE 4 - BIDDING PROCEDURE

4.1 Form and Style of Bids

4.1.1 A Bid shall constitute an irrevocable offer to enter into a contract with the Borough on the terms of the Bid and the Bidding Documents. Bids shall be submitted on forms provided in the Bidding Documents.

4.1.2 All blanks on the Bid form shall be filled in, typed or written legibly in ink (preferably in **blue** ink).

4.1.3 Where required on the Bid, Bidders must quote on all items and they are warned that failure to do so may disqualify the Bid. When quotations on all items are not required, Bidders should insert the words "no bid" in the space provided for any item where no quotation is made.

4.1.4 Bids shall specify a unit or lump sum price, typed or written legibly in ink for each Bid item called for. In case of error in the extension of prices, the unit price will govern. Bids may be rejected if they show any omissions, alteration of the forms, additions not called for, conditional or alternate Bids not called for, qualified bids, or irregularities of any kind.

4.1.5 Any interlineation, alteration or erasure must be initialed by the signer of the Bid.

4.1.6 All requested Alternates shall be Bid. If no change in the Base Bid is required, enter "No Change."

4.1.7 Where two or more Bids for designated portions of the work have been requested, the Bidder may, without forfeiture of their Bid Guarantee, state their refusal to accept award of less than the combination of Bids they so stipulate. The Bidder shall make no additional stipulations on the Bid form nor qualify their Bid in any other manner.

4.1.8 Each copy of the Bid shall include the legal name of the Bidder and a statement that the Bidder is a sole proprietor, a partnership, a corporation, or some other legal entity. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid submitted by an agent shall have a current power of attorney attached, certifying the agent's authority to bind the Bidder. The full name, address, and corporate or partnership title, including status of each person signing shall be typed or printed below the signature.

4.2 Bid Guarantee

4.2.1 Any bid exceeding \$50,000 for total of all base items and alternates shall be accompanied by a certified check, money order, cashier's check, or Bid Bond in the amount of at least 5% of the total Base Bid amount, made payable to the Matanuska-Susitna Borough, Palmer, Alaska, with good and sufficient surety or sureties acceptable to the Borough. Bid Guarantees will be held until the Agreement is executed or for 60 days whichever is less. Power-of-Attorney for the person signing the Bid Bond for the Surety must be submitted with the Bid Bond.

4.2.2 If a surety bond is submitted, it shall be written on the form included in the Bidding Documents and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of their power of attorney.

4.3 Submission of Bids

4.3.1 All copies of the Bid, the Bid Guarantee, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed envelope. The envelope shall be addressed to: Matanuska Susitna Borough, Purchasing Division, 350 East Dahlia Avenue, Lower Level, Palmer, Alaska, 99645, and shall be identified with the Project name, Bid Number, and Bidder's name and address. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

4.3.2 Bids shall be deposited at the designated location **prior** to the time and date for opening of Bids indicated in the Advertisement or Invitation to Bid, or any extension thereof made by Addendum. Bids received after the time and date for receipt of Bids are late Bids, will not be considered, and will be returned unopened.

4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

4.3.4 Oral, telephonic, or faxed Bids are invalid and will not receive consideration.

4.3.5 Bids will not be considered if the following documents are not completely filled out and submitted with the bid: See documents listing on "Bid Form".

4.3.6 A checklist is provided on the Submittal Page as a courtesy to prospective bidders. The checklist may not be all inclusive; it is the Bidder's responsibility to make sure they comply with all requirements within the solicitation documents.

4.3.7 If more than one Bid is offered by any one party, by or in the name of their clerk, Partner, or other person, all such Bids will be rejected. A party who has quoted prices to a Bidder is not thereby disqualified from quoting prices to other Bidders, or from submitting a Bid directly for the work.

4.4 Modification or Withdrawal of Bid

4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the opening of Bids, and each Bidder so agrees in submitting their Bid.

4.4.2 Prior to the time and date designated for opening of Bids, any Bid submitted may be modified or withdrawn by notice to the Borough at the place designated for receipt of Bids. Such notice shall be in writing with the signature of the Bidder and delivered in person or by fax. If by fax, the written confirmation over the signature of the Bidder shall be received before the date and time set for opening of Bids, and it shall be so worded as not to reveal the amount of the original Bid. The modified bid may be sent by fax to 907-861-8617. The Borough shall not be responsible for the opening or security of modifications or withdraws submitted by fax. Contractors are advised to call the Purchasing Division at 907-861-8601 to verify the fax transmission has been received.

4.4.3 Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids, provided that they are then fully in conformance with these Instructions to Bidders.

4.4.4 Bid Guarantee, if any is required, shall be in an amount sufficient for the Bid as modified or resubmitted.

ARTICLE 5 - CONSIDERATION OF BIDS

5.1 Opening of Bids

5.1.1 The properly identified Bids received on time will be opened publicly and will be read aloud. An abstract of the Base Bids and Alternate Bids, if any, will be made available to Bidders upon request after the Purchasing Officer has tabulated or summarized the results.

5.1.2 No responsibility will attach to the Borough or its representatives for the premature opening of, or the failure to open, a Bid not properly addressed and identified.

5.1.3 When vendors and/or contractors propose equal pricing (or tie bids), bids will be reviewed by the Purchasing Officer to determine responsiveness. If all requirements for the bid being responsive are met, then the award or recommendation of the award will be made in favor of the bid which received the earliest time stamp prior to bid opening.

5.2 Rejection of Bids

5.2.1 The Borough shall have the right to reject any or all Bids and to reject a Bid not accompanied by any required Bid Guarantee or by other data required by the Bidding Documents, or to reject a Bid which is in anyway incomplete or irregular.

5.3 Acceptance and Award

5.3.1 This Contract, if awarded, shall be awarded to the lowest qualified, responsive and responsible Bidder. The Borough shall determine whether a Bidder is qualified, responsive and responsible on the basis of the following criteria:

- A. The skill and experience demonstrated by the Bidder in performing contracts of a similar nature;
- B. The Bidder's record of honesty and integrity;
- C. The Bidder's capacity to perform in terms of facilities, personnel, and financing;
- D. Whether the Bidder has been debarred or suspended under Section 3.08.235 of the Matanuska Susitna Borough Code.

E. At all times the best interests of the Borough shall be recognized in awarding bids.

5.3.2 The Borough may waive any informality or irregularity or correct any purely arithmetical or clerical error apparent on the face of the Bid in any Bid or Bids received, when such waiver or correction is in the interest of the Borough. The Borough reserves the right to reject any and all Bids.

5.3.3 The Borough further reserves the right to accept or reject any or all items of any Bid, unless the Bidder qualifies such Bid by specific limitation; also to make an award to the Bidder whose aggregate Bid or any combination of Bid items is lowest.

5.3.4 The Borough shall have the right to select and accept Alternates in any order or combination, and to determine the low Bidder on the basis of the sum of the Base Bid and the Alternates accepted.

5.3.5 The Bidders past performance under Borough Agreements; If the Bidder has failed in any material way to perform its obligations under any Agreement with the Borough, the Bidder may be determined as a non-responsible Bidder.

ARTICLE 6 - POST BID INFORMATION

6.1 Contractor's Qualification Statement

6.1.1 Bidders to whom award of a Contract is under consideration shall submit to the Purchasing Officer upon request, a properly executed Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

6.1.2 Bidders shall attach to the Qualification Statement a sheet listing the following four additional requirements and submit to the Purchasing Officer:

- A. Names of surety companies utilized in the last five years.
- B. Estimate Progress Schedule for the completion of the work.
- C. A resume of the Company and of the job Superintendent for the project.
- D. A list of other projects planned to be concurrent with the construction phase of this project.

ARTICLE 7 – PAYMENT AND PERFORMANCE BONDS

7.1 For any bid exceeding \$50,000 for total of all base items and alternates, the successful Bidder shall furnish the Purchasing Officer a Performance and Payment Bond in the full amount of the Agreement and shall maintain the Bond in force during the continuance of the Agreement including the one-year warranty period, unless otherwise specified. The Bond shall be for the faithful performance of the Agreement in all respects including, but not limited to, payments for all materials and labor. All alterations, extensions of time, additional work and other changes authorized by the Agreement Documents may be made without securing the consent of the Surety or Sureties. Power-of-Attorney for the person signing the Bond for the Surety must be submitted with the Bond. Local Bond Exemptions under MSB 3.08.530 will NOT be considered for this project.

ARTICLE 8 - FORM OF AGREEMENT BETWEEN BOROUGH AND CONTRACTOR

8.1 The Contract shall be in the form provided with the Bidding Documents.

ARTICLE 9 - SUBSTITUTION OF MATERIALS AND METHODS

9.1 Substitution of Materials

9.1.1 There will be no substitutions prior to award of contract unless otherwise specified.

ARTICLE 10 - TYPE OF SPECIFICATIONS

10.1 Technical Provisions

10.1.1 The technical provisions of these Specifications are the abbreviated or "streamlined" type and include incomplete sentences. Omission of words or phrases such as "the Contractor shall", "in conformity therewith", "shall be", "as noted on the drawings", "according to the plans", "a", and/or "the", are intentional. Omitted words or phrases shall be supplied by inference in the same manner as they are when a note occurs on the Drawings.

10.1.2 The Contract shall provide all items, articles, materials, operations, or methods listed, mentioned, or scheduled on the Drawings and/or herein, including labor, necessary equipment and parts, for adequate performance and sound construction as intended by these documents.

10.1.3 Wherever the word "approved", "satisfactory", "directed", "submitted", "inspected", "notify" or similar words or phrases are used, it shall be assumed that the word "Purchasing Officer" follows the verb as the object to the clause, such as "approved by the Purchasing Officer" or "submitted to the Purchasing Officer".

10.1.4 Wherever "or equal" or similar phrases are used, it shall be assumed that decisions as to quality and design shall rest with the Purchasing Officer. All equal items shall be approved in writing.

ARTICLE 11 - SUBCONTRACTORS

11.1 The apparent low bidder shall list the names of the proposed subcontractors and suppliers as provided on the form under, "Proposed Subcontractors and Suppliers". A list of all other subcontractors and suppliers who are to furnish the principal items of labor, equipment, and material proposed for the work shall be submitted within 24 hours of being requested as required by paragraph 5.2.1 of the General Conditions. If none are utilized, state "None".

ARTICLE 12 - PREPARATION OF BIDS

12.1 Follow instructions in Article 4.3.1 of these Instructions to Bidders.

12.2 To be considered responsive, all of the required documents must be included in the sealed envelope with the Bid Form.

ARTICLE 13 - BIDDERS' VIOLATIONS OF TAX OBLIGATIONS

13.1 No Contract shall be awarded to any individual, firm, corporation, or business that is found to be delinquent in any area of taxation, lease or rental agreement with the Borough which has not been remedied within ten calendar days of receipt of written notice.

13.2 This Contract can be terminated for cause if it is determined that the individual, firm, corporation or business is in arrears of any taxation, lease or rental agreement that is due to the Borough that is not remedied within ten calendar days of notification by certified mail.

13.3 The Borough reserves any right it may have to offset amounts owed by an individual, firm, corporation, or business for delinquent Borough taxes against any amount owing to the same under a Contract between the Borough and the same.

ARTICLE 14 - EXECUTION OF CONTRACT

14.1 The Bidder whose Bid is accepted shall execute the Contract and furnish the required bonding and insurance within five working days after Notice of Intent to Award of the Contract is issued. The Contract shall be considered executed by the successful Bidder when the Contract is signed by an authorized representative of the Bidder and the bond(s) and insurance certificate(s) are received by the Purchasing Officer. Failure or neglect of the Bidder to execute the Contract within the time specified may result in a forfeiture of the Bid Guarantee and award of the Contract to the next lowest Bidder.

14.2 The Borough will execute the Contract within ten calendar days after execution by the Bidder as set forth above. The date the Contract is executed by the Borough is the Contract Date. The rights and obligations provided for in the Contract shall become effective and binding upon the parties as of the Contract Date.

ARTICLE 15 - INSURANCE REQUIREMENTS

See Insurance Requirements in Sample Agreement.

ARTICLE 16 - STATE OF ALASKA PREVAILING WAGE SCALE/CERTIFIED PAYROLL

The Contractor shall comply with the Provisions of Title 36 of the Alaska Statutes for any construction projects awarded by the State of Alaska or its political subdivisions, such as local governments. To obtain the latest regulations and prevailing rate for wages. <http://labor.alaska.gov/lss/pamp600.htm>.

It is the Contractor's responsibility to meet and comply with all mandated submissions and documentation required by the Alaska Department of Labor, Wage and Hour Administration, Labor Standards and Safety Division, 1251 Muldoon Road, Suite 113, Anchorage, AK 99504.

ARTICLE 18 - LOCAL BIDDER PREFERENCE

Purchase orders shall be awarded to the lowest qualified, responsive and responsible Bidder, provided that, if the lowest bids are approximately equal, that is, within the lesser of \$2,000 or 5% of each other, preference may be given to local Bidders who maintain and operate businesses within the boundaries of the Borough. MSB 3.08.240

ARTICLE 19 - MATANUSKA-SUSITNA BOROUGH BUSINESS LICENSE

Matanuska-Susitna Borough Code, Chapter 3.36, requires that all entities conducting business within the Borough boundaries have a current business license issued by the Matanuska-Susitna Borough. MSB §3.36.040.

ARTICLE 20 - ALASKA AND CONTRACTORS LICENSES

All bidders must be in compliance with state of Alaska Statutes 08.18 and 45.70.

ARTICLE 21 - PROTEST OF AWARD OF BID:

Within two days of service of the Purchasing Officer's determination of the apparent successful proposal, a proposer who wishes to protest the determination shall lodge a protest with the Purchasing Officer. The protest shall be in writing on a form provided by the Purchasing Officer. The protest shall describe with particularity the alleged errors in the award recommendation. The Purchasing Officer shall conduct a review and, within three working days of receipt of the protest, issue a determination. Full text of the protest and appeal procedures, as well as the protest form, can be downloaded from the Borough's web site at www.matsugov.us, selecting "Services", then selecting "Forms" under Forms and Documents, then selecting "Purchasing Forms". A copy can also be obtained by contacting the Purchasing Division at (907) 861-8601.

In order to receive notice of the apparent successful proposal, the proposer must provide the Borough with a fax number. It is the responsibility of the proposer to follow the selection process and stay apprised of the bid or proposal due date, the date notice of apparent successful proposer is issued and the period in which protests can be filed.

ARTICLE 22. - ACCEPTANCE OF CONTRACT/AGREEMENT TERMS AND CONDITIONS

By signing the Bid Form/Proposal Submittal Form, the bidder or proposer certifies that they have examined and accept the terms and conditions of the contract or agreement contained in this solicitation. The acceptance is inclusive of, but not limited to, all CONTRACT REQUIREMENTS, TERMS AND CONDITIONS, GENERAL PROVISIONS, AND SUPPLEMENTAL CONDITIONS along with any and all conditions contained in the INSTRUCTIONS TO BIDDERS/PROPOSERS associated with this solicitation. Submission of a bid or proposal in

response to this solicitation, certifies that the bidder is willing to accept these terms and understands that failure to accept these terms will subject the bidder to forfeiture of the contract/agreement and loss of any bid guarantee as liquidated damages as outlined in the bid documents.

Bidders and proposers are encouraged to carefully examine the insurance requirements, any bonding requirements, and any Defense and Indemnification clause contained in the sample contract/agreement.

ARTICLE 23. FLOW DOWN PROVISIONS

This Contract may include flow down provisions. This Contract may be issued in connection with another government agency and may include flow down or contract provisions required by that agency. In the event of a conflict between the terms and conditions of the general agreement and any flow down terms and conditions, the flow down terms and conditions shall govern. The Consultant agrees to comply with any and all flow down or contract provisions required by the Borough or another government agency that are included in the Contract. In the event that flow down or contract provisions required by other agencies or by Law are inadvertently omitted from this Contract, both parties agree to negotiate in good faith for that provisions inclusion into the Contract.

ARTICLE 24. CONTRACTORS WARRANTY

All work under the Agreement shall be under warranty by the Contractor for one year from the Final Acceptance Date except when a different period is identified in the SPECIFICATIONS/SCOPE OF WORK. This warranty shall require the Contractor to remedy promptly, without cost to the Owner, any and all defects in material and workmanship including any consequential damages resulting from defective materials or workmanship. If the defect, in the opinion of the Borough Representative, is of such nature as to demand immediate repair, the Borough shall have the right to take corrective action and the cost thereof shall be borne by the Contractor.

ARTICLE 25. ENVIRONMENTAL SPILLS.

Reporting or clean-up of any spills of oil and/or hazardous substances larger than one gallon must be reported to ADEC by the Contractor. Any quantity of a spilled hazardous substance must be cleaned up, containerized, and disposed of in a proper manner. All spills in the water must be reported immediately to ADEC. Clean-up procedures are specified in ADEC's Oil and Hazardous Substances Pollution Control Regulations, 18AAC75. All inquiries may be directed to the Wasilla ADEC office at 376-5038.

SECTION III
SCOPE OF WORK

SOLICITATION #19-064B

PALMER POOL IMPROVEMENTS

SCOPE OF WORK

Renovate the existing Palmer Pool Facility as described in the Construction Documents. The Palmer Pool is located at 1170 W. Bogard Road, Palmer Alaska.

***See solicitation attachments for more information on the scope of the construction project.**

Contract Period

- A. The earliest possible date for the general contractor to access the site is May 28, 2019.
- B. Substantial Completion: 335 days following Notice to Proceed.
- C. Final Completion: 30 days following Substantial Completion

SECTION IV

BID FORM

**BID FORM
SOLICITATION #19-064B**

PALMER POOL IMPROVEMENTS

Having carefully examined the Project Plans and Specifications and all Bidding and Contract Documents as listed in the "Table of Contents" and in compliance with the "Invitation for Bids", the undersigned hereby proposes to furnish all materials, labor, equipment, final design and engineering work and supervision necessary to complete **#19-064B, PALMER POOL IMPROVEMENTS** for the Matanuska-Susitna Borough in full accordance with the Bidding Documents. Award will be made to the lowest responsive and responsible bidder based on total base bid and any selected alternates.

BASE BID				
LINE ITEM	DESCRIPTION	Est. Quantity	Unit Bid Price	Amount Bid
1	Base Bid (as described in Section 01100)	NA	NA	\$ _____
2	Utility connection cost for Matanuska Electric Association. Lump Sum Allowance 1 (Section 01210.3.3.A.1)	NA	NA	\$60,000.00
3	Utility connection cost for Enstar Natural Gas. Lump Sum Allowance 2 (Section 01210.3.3.A.2)	NA	NA	\$8,000.00
4	Removal of Unsatisfactory Soil. Disposal and Replacement with Satisfactory Soil Material. Quantity Allowance 1 (Section 01210.3.3.B.1)	10 Cubic Yards	\$ _____ (Per Cubic Yard)	\$ _____
5	Removal Of Deteriorated Concrete and Steel Reinforcing and Replacement With Reinforced Cast-In-Place Concrete Quantity Allowance 2 (Section 01210.3.3.B.2)	10 Cubic Yards	\$ _____ (Per Cubic Yard)	\$ _____
TOTAL BASE BID (SUM OF LINES 1 THROUGH 5)				\$ _____

Signature

Date

Company Name

BID FORM (CONTINUED)
SOLICITATION #19-064B
PALMER POOL IMPROVEMENTS

ALTERNATE BIDS

LINE ITEM	DESCRIPTION	BASE BID PRICE
Alternate Bid 1	New Roof (Section 01230.3.1.A.)	\$ _____
Alternate Bid 2	Staff Area Upgrades (Section 01230.3.1.B.)	\$ _____
Alternate Bid 3	Lobby Restroom (Section 01230.3.1.C.)	\$ _____
Alternate Bid 4	Locker Room Shower/Restroom Upgrades (Section 01230.3.1.D.)	\$ _____
Alternate Bid 5	Enhanced BAS (Section 01230.3.1.E.)	\$ _____

Signature

Date

Company Name

BID FORM CONTINUED ON FOLLOWING TWO (2) PAGES

BID FORM (CONTINUED)
SOLICITATION #19-064B
PALMER POOL IMPROVEMENTS

UNIT PRICES		
LINE ITEM	DESCRIPTION	Bid Price
1	Removal of unsatisfactory soil and replacement with satisfactory soil material, as required. (Section 01210.3.3.B.1)	\$ _____ (Per Cubic Yard) (Enter same pricing as line 4 of the base bid)
2	Removal of deteriorated concrete and steel reinforcing and replacement with reinforced cast-in-place concrete, as required. (Section 01210.3.3.B.2)	\$ _____ (Per Cubic Yard) (Enter same pricing as line 5 of the base bid)
3	Cutting and patching of concrete slabs-on-grade, as required. (Section 01220.3.1.C)	\$ _____ (Per square foot of concrete removed)
4	Miscellaneous and structural steel, as required. (Section 01220.3.1.D)	\$ _____ (Per pound of steel removed)

Signature

Date

Company Name

BID FORM CONTINUED ON FOLLOWING ONE (1) PAGE

BID FORM (CONTINUED)
SOLICITATION #19-064B
PALMER POOL IMPROVEMENTS

By signing below, the Bidder is hereby certifying to the following –

1. The Bidder has carefully examined the bid documents for the above referenced solicitation and agrees to perform all specified services for the sum(s) provided above.
2. The individual signing below, or the firm association or corporation of which they are a member, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this solicitation.
3. The individual signing below is authorized by the firm association or corporation to bind such association or corporation to a legal contract.
4. The individual signing below, or the firm association or corporation of which they are a member, is not debarred or suspended from doing business with the Matanuska-Susitna Borough.
5. They are acknowledging receipt of the following Addenda Numbers (if no addenda have been issued, either leave blank or write "N/A"):

Addenda numbers being acknowledged: <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>

 Company Name

 Date

 Mailing Address

 Signature

 City, State and Zip Code

 Printed (or typed) Name

 Contact Person (printed or typed)

 Title (printed or typed)

 Phone Number

 Email Address

 Fax Number

 State and Specialty License number

It shall be the responsibility of the Bidder to see that their bid is received before the date and time fixed for opening.	To be considered responsive, Bidders should include the following with their bid: <ul style="list-style-type: none"> ✓ Signed Bid Form (acknowledging Addenda if applicable) ✓ Bid Guarantee (if required) ✓ Other items as required in Instructions to Bidders and Specifications/Scope of work
--	---

SECTION V

SAMPLE AGREEMENT

SAMPLE

CONSTRUCTION AGREEMENT
BETWEEN OWNER AND CONTRACTOR
#19-064B
PALMER POOL IMPROVEMENTS

THIS AGREEMENT is made this _____ day of _____, 20____, by and between:

MATANUSKA-SUSITNA BOROUGH (hereinafter the "BOROUGH") and

(Insert contractor's name in all caps and bold, remove redline feature) (hereinafter the "CONTRACTOR")

The parties agree as follows:

SECTION 1. WORK. The Contractor will do all work described in the Agreement documents listed in Section 11. The work is more specifically identified as:

Renovate the existing Palmer Pool facility as described in the construction documents.

SECTION 2. AGREEMENT TERM. This Agreement shall begin upon execution of this Agreement by both parties and shall expire upon completion of all duties by the Contractor to the satisfaction of the Contracting Officer.

SECTION 3. AGREEMENT TIME. The work shall begin no later than ten days after a Notice to Proceed (NTP) is issued by the Contracting Officer. Substantial Completion is 335 days following issuance of NTP, with Final Completion 30 days after Substantial completion.

SECTION 4. AGREEMENT PRICE. The Borough shall pay the Contractor a total sum of **ENTER TOTAL DOLLAR AMOUNT IN WORDS (WRITE DOLLAR AMOUNT IN FIGURES IN PARENS)** for the work specified in the Agreement documents.

SECTION 5. METHOD OF PAYMENT. A single sum on short-term Agreements (30 days or less) and monthly payments on long-term Agreements (31 days or longer) shall be paid to the Contractor within 30 working days after the Contracting Officer receives and approves a written Request for Payment from the Contractor. A copy of all certified payrolls submitted to the state of Alaska must precede or accompany any payment requests. Final payment will not be made until the Contractor has completed and submitted to the contracting officer a Contractor's Release and Affidavit of Payment of Debts and Claims, and submitted the Department of Labor Notice of Completion with final payment request. **Consent of Surety to Final Payment must also be submitted if applicable.**

SECTION 6. RELATIONSHIP OF THE PARTIES. The Contractor shall perform all obligations under this Agreement as an independent Contractor of the Borough. The Borough will administer this Agreement and monitor the Contractor's performance within the Agreement but shall not supervise or otherwise direct the Contractor except as provided in this Agreement.

SECTION 7. ASSIGNMENTS AND SUBCONTRACTORS. The Contractor may not assign any interest in the Agreement to another person, nor delegate any duties to a subcontractor or other person without the prior written approval of the Contracting Officer. Any attempt by the Contractor to assign any interest or delegate duties under this Agreement shall give the Borough the right to immediately terminate this Agreement without any liability for work performed subsequent to termination.

SECTION 8. WARRANTY. The Contractor expressly warrants that all materials used will be of the best quality locally available and that all workmanship will meet the highest standards of the trade. The Contractor guarantees to answer personally for all materials and workmanship supplied to the Borough and shall undertake to correct workmanship or defect in materials found by the Contracting Officer, or his delegate.

SECTION 9. DEFENSE AND INDEMNIFICATION.

A. The Contractor shall indemnify, defend, and hold and save the Borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character, including costs, expenses, and attorney fees. The Contractor shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions or other laws, rules or regulations, contractual claims, or any other kind of loss, tangible or sustained by any person, or property arising from Contractor's or Contractor's Officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the Borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, Contractor shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the Borough, its agents, or employees.

B. If any portion of this clause is voided by law or court of competent jurisdiction, the remainder of the clause should remain enforceable.

SECTION 10. TERMINATION. This Agreement may be terminated by the Borough:

- A. if the Contractor fails to perform any obligation under this Agreement; or
- B. for any reason upon ten days written notice to the Contractor; or
- C. under Section 7 of this Agreement.

Upon termination of this Agreement, the Borough shall pay the Contractor for all work completed to the satisfaction of the Contracting Officer as of the date termination is effective.

SECTION 11. AGREEMENT DOCUMENTS AND INTEGRATION.

A. This Agreement and those documents and appendices incorporated by reference by "B" of this section shall constitute the entire Agreement of the parties. There are no promises, terms, conditions, or obligations other than those stated in this Agreement and its appendices, and this Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

B. The following documents are incorporated in full text or by reference into this Agreement:

FULL TEXT	REFERENCE
Exhibit A - Bid Form	Matanuska-Susitna Borough License
Exhibit B - Scope of Work	State of Alaska Business License
Exhibit C - Addendum(a) Issued	Contractor's License
Exhibit D - General Conditions & Supplementary General Conditions	#19-064B Solicitation Documents & Attachments
Exhibit E - Certificate of Insurance	
Exhibit F - Payment & Performance Bonds	
Exhibit G - State of Alaska Department of Labor Forms and Publications	

SECTION 12. MODIFICATIONS. The Borough may require modifications in the Scope of Work performed or other terms of this Agreement. It is expressly understood that no changes will be authorized without the written and signed consent of the Contractor and the Borough Purchasing Officer or Borough Manager. All such changes shall be in the form of a Change Order and shall be incorporated into this Agreement.

SECTION 13. EQUAL EMPLOYMENT OPPORTUNITY.

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam war era. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam war era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities. The Contractor agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, or status as a disabled veteran, or veteran of the Vietnam war era. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement. The Contractor shall keep such records and submit such reports concerning the equal opportunity employment provisions set forth in this section for applicants for employment and employees as the Borough may require.

B. The Contractor shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as the Borough may require.

SECTION 14. INTEREST OF MEMBERS OF BOROUGH AND OTHERS. No officer, member, or employee of the Borough, and no member of its governing body, and no other public official of the governing body, shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 15. CONFLICT OF INTEREST. The Contractor, all employees of the Contractor, contractors and other personnel employed by the Contractor providing the services under this Agreement shall in no way stand to gain financially from the terms of this Agreement except for wages, salaries or bonuses paid by the Contractor and shall abide by federal, state, and local laws and regulations associated with conflict of interest and financial disclosure. The Contractor covenants, that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

SECTION 16. AUDITS AND INSPECTIONS. At any time during normal business hours and as often as the Borough or the Comptroller General of the United States may deem necessary, there shall be made available for examination all of the Contractor's records with respect to all matters covered by this Agreement and the Contractor will permit representatives of the Borough or the Comptroller General to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records, personnel information, conditions of employment, and other data relating to all matters covered by this Agreement.

SECTION 17. JURISDICTION; CHOICE OF LAW. Any civil action arising from this Agreement shall be brought in the Superior Court for the Third Judicial District of the state of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties.

SECTION 18. NON-WAIVER. The failure of the Borough at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way effect the validity of this Agreement or any part thereof, or the right of the Borough thereafter to enforce each and every protection hereof.

SECTION 19. PERMITS, LAWS AND TAXES. The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. All actions taken by the Contractor under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Agreement.

SECTION 20. SEVERABILITY. If any provision of the Agreement or the application thereof to any person or circumstances is held invalid, the remainder of this Agreement and its application to other persons or circumstances shall not be affected thereby.

SECTION 21. RULE OF INTERPRETATION. This Agreement shall not be interpreted for or against either party, but shall be interpreted according to its fair and reasonable intent.

SECTION 22. NOTICES. Any notice required pertaining to the subject matter of the Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following address:

Borough: 350 East Dahlia Avenue, Palmer, Alaska 99645

Contractor: (Insert Contractor's address here)

SECTION 23. INSURANCE.

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

It is highly recommended that the Contractor confer with their respective insurance companies or brokers to determine if their insurance program complies with the Borough's Insurance requirements.

The Contractor shall procure and maintain the following insurances:

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services office form number CG 0001 (Edition 10/01) covering Commercial General Liability.
2. Insurance Services office form number CA 0001 (Edition 10/99) covering Automobile Liability, symbol 1 "any auto".
3. Worker's Compensation insurance as required by the State of Alaska and Employers Liability Insurance.
4. Builder's Risk Policy - Full Agreement value, per occurrence, for each building(s) or structure(s) which is being altered, modified, renovated, repaired, or remodeled under the terms of this Agreement.

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. General Liability

\$1,000,000

combined single limit per occurrence for bodily injury, property damage, personal injury and advertising injury.

\$2,000,000

Products/Completed Operations

\$2,000,000

General Aggregate Limit. The general aggregate limits shall apply separately to each project.

If the general liability insurance is written on a claims made form, the Contractor shall provide insurance for a period of two years after final payment of this agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.

2. Auto Liability:

\$1,000,000

combined single limit per accident for bodily injury and property damage.

3. Worker's Compensation and Employers Liability:

Worker's Compensation shall be statutory as required by the State of Alaska. Employers liability shall be endorsed to the following minimum limits:

Bodily Injury - \$1,000,000 Per Occurrence

Bodily Injury - \$1,000,000 Per Employee

Bodily Injury by Disease - \$1,000,000 Policy Limit

4. Excess Liability:

\$5,000,000

In order to meet the required minimum limits of insurance it is permissible for the Contractor to combine an excess liability or umbrella policy with the general liability, auto liability or employers liability. In the instance where the Contractor purchases an excess liability or umbrella policy the occurrence limit and the aggregate limit may be of the same amount.

C. Deductibles and Self-Insured Retention

Prior to work commencing any deductible or self-insured retention must be declared and approved by the Borough. The Contractor may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the Borough, the Contractor shall reduce or eliminate such deductibles or self-insured retention as respects the Borough, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. The Borough, its Administrator, officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor premises owned, occupied or used by the Contractor or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the Borough, its Administrator, officers, officials, employees and volunteers.
- b. The Contractor's insurance coverage shall be primary insurance as respects the Borough, its Administrator, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Borough, its Administrator, officers, officials, employees and volunteers shall be excess of the Contractor insurance and shall not contribute to it.
- c. The Contractor insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Worker's Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the Borough, its Administrator, officers, officials, employees and volunteers for losses arising from work performed by the Contractor or any subcontractor for the Borough.

3. All Insurance

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the Contractor or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the Borough. Such notice shall be mailed by the Contractor to the attention of the Borough's Purchasing Officer.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a minimum A.M. Best rating of A-VII.

F. Verification of Coverage

Contractor shall furnish the Borough with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the Borough. All certificates are to be received and approved by the Borough before work commences. The Borough reserves the right to require complete, certified copies of all required insurance policies, at any time.

G. Subcontractors

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all requirements stated herein.

H. Lapse in Coverage

A lapse in insurance coverage is a material breach of this agreement which may result in immediate termination of the agreement, pursuant to the appropriate Section within the contract.

SECTION 24. AGREEMENT ADMINISTRATION.

A. The Borough Manager, or their designee, will be the representative of the Borough administering this Agreement.

B. The services to be furnished by the Contractor shall be administered, supervised, and directed by _____ . In the event that the individual named above or any of the individuals identified in the Bid to perform work under the Agreement is unable to serve for any reason, the Contractor shall appoint a successor in interest subject to a written approval of the Matanuska-Susitna Borough.

SECTION 25. UNDERSTANDING. The Contractor acknowledges that the Contractor has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of the Contractor's choice, and is executing this Agreement of the Contractor's own free will.

SECTION 26. CONTRACTORS' VIOLATIONS OF TAX OBLIGATIONS.

A. Any Contractor in arrears on a Borough obligation, including, but not limited to tax, assessment, lease, sale, or rental payments, whether as an individual, or as a representative of a business, organization, firm, corporation, or partnership, shall not be awarded the Agreement if the delinquency is not cured within ten calendar days of receipt of written notice sent by the Borough of the delinquency.

B. This Agreement can be terminated for cause, pursuant to Section 10, if it is determined that a Contractor, whether the amounts owed are in the name of the Contractor as an individual or as a representative of a firm, business, corporation, or partnership, is in arrears of any taxation, lease or rental agreement that is due to the Borough that is not remedied within 10 calendar days of notification by regular mail.

C. The Borough reserves any right it may have to offset amounts owed by an individual, firm, corporation or business for delinquent Borough taxes, moneys owed on sales, assessments, leases and rental agreements, against any amount owing to the same under an Agreement between the Borough and the same.

SECTION 27. ENVIRONMENTAL SPILLS. Reporting or clean-up of any spills of oil and/or hazardous substances larger than one gallon must be reported to ADEC by the Contractor. Any quantity of a spilled hazardous substance must be cleaned up, containerized, and disposed of in a proper manner. All spills in the water must be reported immediately to ADEC. Clean-up procedures are specified in ADEC's Oil and Hazardous Substances Pollution Control Regulations, 18AAC75. All inquiries may be directed to the Wasilla ADEC office at 376-5038.

SECTION 28. THIRD PARTY FINANCING AGREEMENTS AND/OR ASSIGNMENTS OF PAYMENT NOT ALLOWED.

Because of additional administrative and accounting time required of borough departments/divisions when third party financing agreement and/or assignments of payment are permitted, they will not be allowed under any agreement resulting from this Invitation to Bid.

SECTION 29. FLOWDOWN PROVISIONS. This Contract may include flow down provisions. This Contract may be issued in connection with another government agency and may include flow down or contract provisions required by that agency. In the event of a conflict between the terms and conditions of the general agreement and any flow down terms and conditions, the flow down terms and conditions shall govern. The Consultant agrees to comply with any and all flow down or contract provisions required by the Borough or another government agency that are included in the Contract. In the event that flow down or contract provisions required by other agencies or by Law are inadvertently omitted from this Contract, both parties agree to negotiate in good faith for that provisions inclusion into the Contract.

SECTION 30. CONTRACTS ENFORCEABLE AGAINST THE BOROUGH (MSB CODE 3.08.120)

A contract for supplies, services, professional services or construction, or any amendment to the contract, may not be enforced against the borough unless its terms have been approved in accordance with this chapter, and unless the contract or amendment to the contract has been set forth in writing, executed in accordance with this chapter.

SECTION 31. PUBLICATION, REPRODUCTION AND USE OF MATERIALS

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The Borough shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

SECTION 32. AUTHORITY OF THE PURCHASING OFFICER (MSB Code 3.08.150)

All borough contracts for supplies, services, professional services and construction, and any amendments to the contracts shall be signed by the manager or the purchasing officer.

MSB Code 3.08.170 CONTRACT AMENDMENTS; ASSEMBLY APPROVAL states

- (A) Contract amendment shall not be used to avoid procurement by the competitive procedures establish under this title.
- (B) Except for emergency procurement authorized under MSB 3.08.200, contracts for supplies, services, profession services and construction may be amended by the manager or the purchasing officer with the approval of the assembly, as set forth in MSB 3.08.161, only for the following reasons:
 - (1) to change the quantity order or date of delivery under contract for supplies, where necessary to meet unforeseen borough requirements;
 - (2) to change the quantity of services or professional services to be rendered, or to change the scope of a project under a contract for services or professional services where necessary to meet unforeseen changes in borough requirements;
 - (3) to change the scope of a project or the scope of services or professional services under a construction contract to meet unforeseen borough requirements, or to change the specification under a construction contract because unforeseen conditions render the original specification impracticable;
 - (4) to change the time for completing a project under a contract for services, professional services or construction;
 - (5) to correct an error in contract specifications made by the borough in good faith or to resolve a good faith dispute between the borough and a contractor as to a party's rights and obligations under the contract; and
 - (6) to change administrative provisions of a contract without materially altering the contract terms governing the quantity or quality of supplies, services, professional services or construction furnished the borough.

For these purposes, the Purchasing Officer is defined as **Rustin Krafft** during absences of the purchasing officer, the Assistant Purchasing Officer has been delegated the authority to act as the Purchasing Officer.

AUTHORITY OF THE BOROUGH PROJECT MANAGER

The Borough Project Manager has the authority to monitor and administer the Agreement, but cannot make changes to the amount of the contract nor change the completion date of the contract

I hereby acknowledge that I have read and understand the authority granted to the parties by the Matanuska-Susitna Borough.

SIGN HERE: _____

SECTION 33. FUND VERIFICATION. Fund source and verification of funds for this project:

Funding Source: **Purchase Order 2019-2670**

MATANUSKA-SUSITNA BOROUGH

CONTRACTOR

SAMPLE

RUSTIN M. KRAFFT

Purchasing Officer

Name: _____

Title: _____

STATE OF ALASKA

Third Judicial District

On _____, 20____, _____ personally appeared before me,

1. _____ who is personally known to me
2. _____ whose identity I proved on the basis of _____
3. _____ whose identity I proved on the oath/affirmation of _____, a credible witness

to be the signer of the **Bid #19-064B, PALMER POOL IMPROVEMENTS** and he/she acknowledged that he/she signed it.

NOTARY PUBLIC
My commission expires: _____

STATE OF ALASKA

Third Judicial District

On _____, 20____, RUSTIN M. KRAFFT, Purchasing Officer, personally appeared before me, who is personally known to me, to be the signer of the above document, and he acknowledged that he signed it on behalf of the Matanuska-Susitna Borough.

NOTARY PUBLIC
My commission expires: _____

SECTION VI

GENERAL CONDITIONS

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Invitation for Bids, Instructions to Bidders, Agreement, the Conditions of the Contract (General Supplementary and other Conditions), the Drawings, the Specifications, the Payment and Performance Bond, Certificate of Insurance, additional documents as listed in the Supplementary General Conditions, and all Addenda issued prior to and all Modifications issued after award of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Architect pursuant to Subparagraph 1.2.5, or (4) a written order for a minor change in the Work issued by the Architect pursuant to Paragraph 12.3. A Modification may be made only after award of the Contract.

1.1.2 THE CONTRACT

The Contract Documents form the Contract. The Certificate of Insurance and required bonds are necessary for the validity of the Contract. The Contract represents the entire integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements. The Contract may be amended or modified only by a Modification as defined in Paragraph 1.1.1. Nothing contained in the Contract Documents shall create any contractual relationship between the Borough or the Architect and any Subcontractor or Sub-Subcontractor.

1.1.3 THE WORK

The Work comprises the completed construction required by the Contract Documents, and includes all labor and supervision necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.2 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS

1.2.1 The Contract Documents shall be signed by the Borough and Contractor. If either the Borough or the Contractor or both do not sign the Conditions of the

Contract, Drawings, Specifications, or any of the other Contract Documents, the Agreement shall identify them by reference to specific documents.

1.2.2 By submitting a bid, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Contract is to be performed and correlated his observation with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be binding as if required by all. Work not covered in the Contract will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended result. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings, unless otherwise defined in the contract documents.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Written interpretations necessary for the proper execution or progress of the Work, in the form of drawings or otherwise, will be issued within 14 calendar days by the Architect and in accordance with any schedule agreed upon. Either party to the Contract may make written request to the Architect for such interpretations. Such interpretations shall be consistent with and reasonably inferable from the Contract Documents, and may be effected by Field Memo. The Borough will provide field memo forms. D.V.C.R.'s/D.C.V.R.'s will not be used. A copy of the field memo form is attached.

1.2.6 SPECIFIED ITEMS

1.2.6 Where items are specified by use of referenced standard specifications, the date of the referenced standard shall be the latest edition at the time of award of the contract, unless otherwise specified.

1.3 COPIES FURNISHED AND OWNERSHIP

1.3.1 The Contractor will be furnished, free of charge the number of copies of the Contract Documents as set

out in the Supplementary General Conditions. Additional sets will be furnished upon request at actual cost.

ARTICLE 2

ARCHITECT

2.1 DEFINITION

2.1.1 The Architect is the person or organization lawfully licensed to practice architecture, or an entity lawfully practicing architecture identified as such in the Borough-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Architect means the Architect and his subconsultants, whether under contract or within his own organization, or his authorized representative.

2.1.2 The term Architect is interchangeable with the term Project Architect.

2.2 SERVICES OF THE ARCHITECT

2.2.1 The Architect will provide certain services as hereinafter described.

2.2.2 Should errors, omissions, or conflicts in the Drawings, Specifications, or other Contract Documents provided by the Architect be discovered, the Architect will prepare such modification or amendments or supplementary documents and provide consultation as may be required.

2.2.3 The Architect and his sub-consultants will visit the site at intervals appropriate to the stage of construction to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The Architect and his subconsultants shall make as many on-site inspections and observations as may reasonably be required to fulfill their obligations to the Borough. On the basis of such on-site observation, the Architect and his subconsultants shall endeavor to guard the Borough against defects and deficiencies in the Work of the Contractor.

2.2.4 The Architect will render written field reports to the Project Manager in the form required by the Project Manager relating to the periodic visits and inspections of the Project required by Subparagraph 2.2.3.

2.2.5 The Architect will not be responsible for and will not have control or charge of construction means,

methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the work.

2.2.6 The Architect and the Project Manager will conduct inspections to determine the dates of Substantial Completion and Final Completion, and the Project Manager will issue a final Certificate for Payment.

2.2.7 The Architect may prepare a set of reproducible record prints of Drawings showing significant changes in the Work made during the construction process, based on neatly and clearly marked-up prints, Drawings, and other data furnished by the Contractor under Section 4.12.1. Similarly, the Architect may also provide the Borough assistance in the original operation of any equipment or system such as initial start-up, testing, adjusting, and balancing.

2.2.8 In case of the termination of the employment of the Architect, the Borough may appoint another architect whose status under the Contractor Documents shall be that of the former Architect, or the Borough may have the Project Manager assume all of the services of the Architect thereafter.

2.3.10 CLAIMS AND DISPUTES

2.3.10.1 Except for claims which have been waived by acceptance of final payment as provided in Paragraph 9.7.5 and 9.7.6, and except as otherwise provided in this Contract, any claims, any disputes, or other questions arising out of, or relating to, this Contract shall be presented in writing by the Contractor to the Architect. In presenting any claim, the Contractor shall clearly and specifically state in writing:

1. The specific contract provision under which the claim is made.
2. The contract item on which the claim is based.
3. The specific relief including additional time and/or compensation to which the Contractor believes he is entitled.
4. The detailed basis of any additional actual costs that are claimed and all verifiable documentation necessary to support those costs.

ARTICLE 3

OWNER

The contractor shall provide access to any such records and furnish copies, if requested. In computing damages or costs claimed for a change order, the contractor must prove actual damages based on internal costs for equipment, labor or efficiencies. Total cost, modified total cost, or jury verdict forms of presentation of damage claims are not permissible to show damages.

2.3.10.2 Claims must be submitted not later than 20 days after the first observance or awareness or notice of the basis for the claim. If the amount of time and/or compensation cannot be readily ascertained at the time the claim is submitted, such amounts shall be submitted as soon as they are discernible. In any case, the amount of time and/or compensation claimed together with all necessary supporting data, shall be submitted no later than 60 days after completion of the contract item of work on which the claim is based.

2.3.10.3 Failure to comply with Clause 2.3.10.1, 2.3.10.2, 12.2.1. shall constitute a waiver and abandonment of the right to make any claim on the particular contract item in question.

2.3.10.4 A claim as soon as received from the Contractor shall be acknowledged in writing by the Architect. If the claim is not disposed of by agreement, the claim shall be reviewed by the Architect, who shall, within fourteen (14) days, advise the Project Manager in writing of the Architect's recommendation. Within fourteen (14) days thereafter, the Project Manager shall adopt or modify the Architect's recommendation in whole or in part, and communicate his final decision to the Contractor through the Architect. This final decision of the Project Manager shall, unless otherwise determined on appeal to the Superior or Supreme Court of Alaska be final and conclusive. Any appeal from this decision to the Superior Court of Alaska shall be commenced on or before 30 days from the date of completion and acceptance of the entire contracted Work. In the event that no such appeal to the court is made within 30 days, the decision of the Borough shall be final and conclusive as to the dispute. Pending final decision of any dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Architect's recommendation until the Borough's final decision is made, at which time the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Borough's final decision.

2.3.10.5 The jurisdiction venue for any court action arising as a result of this Contract shall be in the Superior Court of Alaska, Palmer, Alaska.

3.1 DEFINITIONS

3.1.1 The Owner is the Matanuska-Susitna Borough, and is referred to throughout the Contract as the Borough, or may be described in some contract documents as "Owner." The term Borough means the Borough or its authorized representative. The Borough may act through either the Architect or the Project Manager as set forth herein.

3.1.2 Requests for changes in the work will be considered as Borough requests only if issued in writing by the Architect or Project Manager. The Contractor shall not respond to request for changes from any other sources.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Borough shall furnish copies of surveys describing the limits of the project site.

3.2.2 The Borough shall secure and pay for easements for permanent structures or permanent changes in existing facilities.

3.2.3 Information or services under the Borough's control shall be furnished by the Borough with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.4 The Borough shall issue all instructions to the Contractor through the Architect or Project Manager.

3.3 BOROUGH'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or persistently fails to carry out the Work in accordance with the Contract Documents, the Borough, by a written order signed by the Architect or Project Manager may order the Contractor to stop the Work, or any portion thereof, until the cause of such order has been eliminated; however, this right of the Borough to stop the Work shall not give rise to any duty on the part of the Borough to exercise this right for the benefit of the Contractor or any other person or entity.

3.4 BOROUGH'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Borough may, after seven days' written notice to the Contractor and without prejudice to any other remedy it may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of the Architect's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Borough.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The contractor is the person or organization identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 Before making his proposal or bid to the Borough, and continuously after execution of the Contract, the Contractor shall carefully study and compare the Contract Documents and shall at once report to the Borough any error, inconsistency or omission he may discover, including any requirement which may be contrary to any law, ordinance, rule, regulation or order of any public authority bearing on the performance of the Work. By submitting his proposal or bid for the Contract and Work under it, the Contractor agrees that the Contract Documents appear accurate, consistent and complete insofar as can reasonably be determined. The Contractor shall perform no portion of the Work at any time without Contract Documents and, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be

solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, regardless of the trade performing the Work, or the particular portion of the Contract Documents requiring the Work. It is the intent of the Contract Documents to provide a complete and finished project in all areas, unless specifically stated otherwise. Contractor shall furnish any necessary accessories, even if not specifically specified, that are required to finish the Work, in a first-class finished and/or operating condition for use by the Borough as indicated by the Contract Documents.

4.3.2 The Contractor shall not be relieved from his obligations to perform the work in accordance with the contract documents either by the activities or duties of the Architect or the Project Manager in their administration of the contract, or by inspections, tests or approvals (or the lack thereof) required or performed under Article 7.8 by persons other than the contractor.

4.4 LABOR AND MATERIALS

4.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all supervision, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task they are assigned.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Borough that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective, and may be rejected. If required by the Borough, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty remedy required by law or by the Contract Documents.

4.5.2 Contractor's Warranty as contained in paragraph 4.5.1 shall continue for a period of one year from the

date of substantial completion. Items as determined on substantial completion inspection to be deficient in any respect shall be corrected, and the warranty period for those items shall not begin until the deficiencies have been corrected, reexamined and finally approved.

Within the warranty period, the contractor shall remedy, at the contractor's expense, any failure to conform, or any defect. In addition, the contractor shall remedy, at the contractor's expense any damage to the Borough's owned or controlled property when the damage is the result of the contractor's failure to perform to contract requirements, or any defects of equipment, material, workmanship or design furnished by the contractor. The contractor shall restore any work damaged in fulfilling the terms and conditions of this paragraph. Contractor's warranties apply to all work, goods, materials and items furnished by subcontractors or suppliers.

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are in effect or become effective during the term of the Contract.

4.6.2 The Contractor shall have and maintain in effect an Alaska Business License, and be registered as a general contractor and shall be responsible for current licenses and registration for all subcontractors, subsubcontractors and suppliers as required by Alaska law. The Contractor shall notify the Borough in writing of any canceled, revoked, or expired license or registration of the Contractor or Subcontractors, or subsubcontractors.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and for all other permits and governmental fees, licenses, and inspections necessary for the proper execution and completion of the Work which are customarily secured after award of the Contract, and which are in effect at the time the bids are received.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are in variance therewith in any respect, he shall promptly notify the Architect in writing, and any necessary changes shall be adjusted by appropriate modification. If the Contractor performs any

Work knowing or which he reasonably should have known to be contrary to such law, ordinances, rules and regulations, and without such notice to the Architect, the Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.8 CASH ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract documents. These allowances shall cover the net cost of the materials and equipment delivered and unloaded at the site, and all applicable taxes. The Contractor's handling costs on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance. The Contractor shall cause the Work covered by these allowances to be performed for such amounts and by such persons as the Project Manager may direct, but he will not be required to employ persons against whom he makes a reasonable objection. If the cost, when determined, is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order which will include additional handling costs on the site, labor, installations costs, overhead, profit and other expenses resulting to the Contractor from any increase over the original allowance.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall be satisfactory to the Project Manager, and shall not be changed except with the consent of the Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor.

4.10 RESPONSIBILITY FOR THOSE PERFORMING THE WORK

4.10.1 The Contractor shall be responsible to the Borough for the acts and omissions of all his employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Contractor.

4.11 PROGRESS SCHEDULE

4.11.1 The Contractor, within fifteen days after being awarded the Contract, shall prepare and submit for review to Architect and Project Manager an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents. The progress schedule shall indicate the dates for starting and completion of the categories of construction outlined on the list of Progress Schedule Items attached at the end of the Supplementary General Conditions. The progress schedule shall indicate the percentage of each phase to be completed at the end of each month during the term of the Contract, and shall be revised as required by the conditions of the Work; or updated progress schedule shall be submitted with each pay request.

4.12 DRAWINGS AND SPECIFICATIONS AT THE SITE

4.12.1 The Contractor shall maintain at the site for the Project Manager and Architect a complete set of the Contract Documents maintained in an up to date condition, including all amendments, modifications or changes, in a neat, legible manner to the satisfaction of the Project Manager. The Contractor shall also maintain a complete set of as-built drawings which shall show all deletions, additions, changes in routing or location, materials or design, piping, equipment, ducts, conduit and other items pertinent to the entire scope of the Project. These record drawings shall reflect all changes made by change orders and/or supplemental drawings. The as-built drawings shall (1) place special emphasis on concealed items and substitutes to items specified or shown including all approved changes to such items; (2) include all work being performed by any subtrade, including mechanical and electrical which shall be up to date and correct; (3) clearly indicate all relocations and routing, dimension adequately to assure location for future maintenance or remodeling. The as-built drawings shall be available to the Project Manager and the Architect, and, prior to final acceptance and as an essential condition of final acceptance, shall be certified as correct by the general contractor, by the electrical and mechanical subcontractors and other subcontractors by signature on the record drawings, and when complete shall be submitted to the Architect. The Project Manager may decline to approve progress payment requests if the up to date contract documents and as-built drawings are not currently maintained, if such failure renders it difficult or impossible for the Architect or Project Manager to determine the status, progress, nature or quality of the work.

4.12.2 Whenever manufacturers' printed Specifications or Instructions are by reference made part of these Specifications, the Contractor shall furnish copies of such Specifications or Instructions to the Architect.

4.12.3 All manufacturers' warranties for any item installed in the Work shall be delivered to the Architect upon completion of the Work.

4.12.4 The Contractor shall verify dimensions on the job. If errors or omissions of dimensions or other discrepancies are found, he shall immediately notify the Architect. If the Contractor continues work in the area affected before clarifications are made by Architect the Contractor shall bear the cost of any changes required as a result of such errors, omissions or discrepancies.

4.13 SHOP DRAWINGS AND SAMPLES

4.13.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.

4.13.2 Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

4.13.3 The Contractor shall review, stamp with his approval and submit to the Architect with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the work of any other contractor, all Shop Drawings and Samples required by the Contract Documents or subsequently by the Architect or Project Manager as covered by Modifications. Shop Drawings and Samples shall be properly identified as specified, or as the Architect may require. At the time of submission the Contractor shall inform the Architect in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents.

4.13.4 By approving and submitting Shop Drawings and Samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he had checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents.

4.13.5 The Architect will review and approve Shop Drawings and Samples with reasonable promptness so as to cause no delay, but only for conformance with the

design concept of the Project and with the information given in the Contract Documents. The Architect's approval of a separate item shall not indicate approval of an assembly in which the item functions.

4.13.6 The Contractor shall make any corrections required by the Architect and shall resubmit the required number of corrected copies of Shop Drawings or new Samples until approved. The Contractor shall direct specific attention in writing or in resubmitted Shop Drawings to revisions other than the corrections requested by the Architect on previous submissions.

4.13.7 The Architect's approval of Shop Drawings or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation, nor shall the Architect's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings and Samples.

4.13.8 No portion of the Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been approved by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings and Samples.

4.13.9 Not used.

4.13.10 Contractor shall instruct maintenance personnel of the Borough in operation and maintenance of all equipment. This will include actual demonstration of operation and written instructions as required. Contractor shall bind all required instructions, including architectural, mechanical and electrical guarantees and manufacturers' literature into a three-ringed binder with index and identification and provide four copies.

4.14 USE OF SITE

4.14.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

4.14.2 Before starting Work, the Contractor shall locate all general reference points, and take all steps necessary to prevent their dislocation or destruction, and if disturbed or destroyed, replace as directed, at no cost to the Borough. A competent licensed surveyor shall lay out Work and be responsible for its accuracy.

4.14.3 Arrangements shall be made with the public utility before disconnecting or connecting utility services and all temporary service connections shall be removed after their purpose has been served. The cost of installation and any service charges incidental thereto for temporary or permanent services will be the responsibility of the Contractor, except permanent "connection charges" made in lieu of assessments or assessment charges.

4.15 CUTTING AND PATCHING OF WORK

4.15.1 The Contractor shall do all cutting, fitting, or patching of his Work that may be required to make its several parts fit together properly, and shall not endanger any Work by cutting, excavating or otherwise altering the Work or any part of it.

4.16 CLEANING UP

4.16.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and leave the Work "broom clean" or its equivalent, except as otherwise specified.

4.16.2 If the Contractor fails to clean up, the Borough may do so and the cost thereof shall be charged to the Contractor as provided in Paragraph 3.4.

4.17 Not Used.

4.18 DEFENSE AND INDEMNIFICATION

4.18.1 The Contractor shall indemnify, defend, and hold and save the Borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character, including costs, expenses, and attorney fees. The Contractor shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions or other laws, rules or regulations, contractual claims, or any other kind of loss, tangible or sustained by any person, or property arising from Contractor's or Contractor's Officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification

responsibility includes claims alleging acts or omissions by the Borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, Contractor shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the Borough, its agents, or employees.

4.18.2 If any portion of this clause is voided by law or court of competent jurisdiction, the remainder of the clause should remain enforceable.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.

5.1.2 A Sub-Subcontractor is a person or organization who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-Subcontractor or an authorized representative thereof.

5.1.3 Nothing contained in the Contract Documents shall create any contractual relation between the Contractor and the Architect or between the Borough or the Architect and any Subcontractor or Sub-Subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 By the end of the first work day following bid opening, the Contractor shall deliver to the Borough the list of subcontractors proposed for the work. Subcontractors shall be listed on the form that occurs at the end of the Supplementary General Conditions. This list is titled, "Proposed Subcontractors and Suppliers." The Borough will promptly reply to the Contractor in writing stating whether or not it has reasonable objections to any such proposed person or entity. Failure of the Borough or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Borough has made reasonable objection under the provisions of Subparagraph 5.2.1.

5.2.3 If the Borough has reasonable objections to any such proposed person or entity, the Contractor shall submit a substitute to whom the Borough has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in the cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively to submitting names as required by Subparagraph 5.2.1.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Borough or Architect makes reasonable objection to such substitution.

5.2.5 If the Borough requires a change of any proposed Subcontractor or person or organization previously accepted by them, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate agreement, the Contractor shall require each Subcontractor to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Borough and the Architect. The Subcontract agreement shall preserve and protect the rights of the Borough and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Borough. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of all of the Contract Documents to which the Subcontractor will be bound by Paragraph 5.3, and identify to the Subcontractor any terms and condition of the proposed Subcontractor shall similarly

make copies of such Documents available to his Sub-Subcontractors.

5.4 EXAMINATION OF RECORDS

5.4.1 The Contractor agrees that when any claim is made under this Contract that the Borough or any of his duly authorized representatives shall until the expiration of six years after final payment under this Contract have access to and right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract. The periods of access and examination described above include, but not limited to, pertinent books, documents, papers, and records which relate to litigation or settlement of claims arising out of the performance of this Contract.

5.4.2 The Contractor agrees to include in his subcontracts hereunder provisions to the following effect:

"Subcontractor agrees that when any claim is made under this Contract, the Borough or any of his duly authorized representative shall until the expiration of six years after final payment under this Contract have access to and the right to examine any directly pertinent books, documents, papers, and records of the Subcontractor involving transactions related to this Contract. The periods of access and examination described above include, but are not limited to, pertinent books, documents, papers, and records which relate to litigation or settlement of claims arising out of the performance of this Contract."

ARTICLE 6

SEPARATE CONTRACTS

6.1 BOROUGH'S RIGHT TO AWARD SEPARATE CONTRACTS

6.1.1 The Borough reserves the right to award other contracts in connection with other portions of the Project under these or similar Conditions of the Contract.

6.1.2 When separate contracts are awarded for different portions of the Project, "the Contractor" in the Contract Documents in each case shall be the Contractor who signs each separate contract.

6.2 MUTUAL RESPONSIBILITY OF CONTRACTORS

6.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his Work with theirs.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Architect any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

6.2.3 The Contractor shall indemnify, defend and hold harmless the Borough and the Architect and their agents and employees from and against all claims for damages, losses and expenses including, but not limited to, attorneys' fees arising out of or resulting from the Contractor causing damage to the Work or property of any separate Contractor employed by the Borough on the Project, in accordance with paragraph 4.18.1.

6.3 CUTTING AND PATCHING UNDER SEPARATE CONTRACTS

6.3.1 The Contractor shall be responsible for any cutting, fitting and patching that may be required to complete his Work except as otherwise specifically provided in the Contract Documents. The Contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor except with the written consent of the Architect.

6.3.2 Any costs caused by defective or ill-timed work shall be borne by the party causing those costs. This provision shall only apply to cutting and patching work pursuant to Article 6.3.

6.4 BOROUGH'S RIGHT TO CLEAN UP

6.4.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 4.16, the Borough may clean up and charge the cost thereof to the several contractors pro rata as determined by the Project Manager.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by Alaska law.

7.2 SUCCESSORS AND ASSIGNS

7.2.1 The Borough and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the Borough.

7.3 WRITTEN NOTICE

7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice or if received via confirmed legible facsimile transmission.

7.4 CLAIMS FOR DAMAGE

7.4.1 Should either party to the contract suffer injury or damage to persons or property because of any act or omission of the Borough or of any of his employees, agents or others for whose acts he is legally liable, claims shall be made in writing to the Borough within twenty days after the first observance of such injury or damage; otherwise, the contractor shall have waived and abandoned any and all rights he may have against the Borough; and such claim shall clearly and specifically state in writing elements 1-4 as listed in paragraph 2.3.10.1, and shall be governed by 2.3.10.2, 2.3.10.3, 2.3.10.4 and 2.3.10.5.

7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.5.1 The Contractor shall furnish a performance bond in an amount equal to 100% of the contract price as security for the faithful performance of this Contract and also a payment bond in an amount equal to 100% of the

contract price on the forms provided in the Project Manual, with sureties in compliance with applicable law and qualified by law to act as surety in furnishing such bonds, and as may be acceptable to the Borough. The premium shall be paid by the Contractor. The Contractor shall deliver the required bonds to the Borough not later than ten days after notice of award.

7.5.2 If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated or it ceases to meet the requirements of paragraph 7.5.1, the Contractor shall immediately notify the Borough within five days thereafter substitute another Bond and Surety, both of which must be acceptable to the Borough.

7.6 RIGHTS AND REMEDIES

7.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

7.7 ROYALTIES AND PATENTS

7.7.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall defend and save the Borough harmless from loss on account thereof, except that the Borough shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Architect.

7.8 TESTS

7.8.1 Contractor's Obligation

1. The Contractor shall obtain and pay for all testing that may be necessary to qualify materials for use in the work. This shall include material quality tests, mix designs, equipment and plant calibration, optimum moisture, maximum density curves, and other similar tests required to qualify materials for compliance with the specified standards for field control tests. The Contractor shall submit test results to the Architect sufficiently in advance of the work so that approval to proceed is

received by the Contractor prior to the using material in the work.

2. Samples of material required for testing shall be furnished by the Contractor.
3. The Contractor is responsible for coordinating with the Borough's Representative and requesting all testing, including field testing paid for by the Borough.
4. All standby time for on-site testing which is caused by the delay in Contractor's work because the progress of the work is not ready for field testing will be paid by the General Contractor.

7.8.2 Borough's Obligation

7.8.2.1 The Borough shall pay for all field testing performed to monitor construction control of materials used in the work. This includes slump, air and cylinders on concrete work, density tests, and other similar control tests. Failing tests shall be retested and the costs of additional testing shall be borne by the Contractor. The Contractor must notify the Borough about work which will require testing a minimum of 24 hours before the work begins.

7.8.3 If after the commencement of the Work the Architect or Project Manager determines that any Work requires special inspection, testing, or approval which Subparagraph 7.8.1 does not include, he will, upon written authorization from the Borough, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as in Subparagraph 7.8.1. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including the Architect's additional services made necessary by such failure; otherwise the Borough shall bear such costs, and an appropriate Change Order shall be issued.

7.8.4 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Architect.

7.8.5 If the Architect wishes to observe the inspections, tests or approvals required by this

Paragraph 7.8, he will do so promptly and, where practicable, at the source of supply.

7.8.6 Neither the observations of the Architect in his administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

7.9 INTEREST

7.9.1 Any monies not paid when due to either party under this Contract shall bear interest at the legal rate in force in the State of Alaska at the time of award of the contract.

7.10 WAGE RATES ON PUBLIC CONSTRUCTION

7.10.1 Contractor shall file with the Alaska State Department of Labor, and copy the Borough, showing conformance with AS 36.05.010, Wage Rates on Public Construction, certified payrolls from Contractor and Subcontractors as stipulated by AS 36.05.040, Filing Schedule of Employees, Wages Paid and Other Information.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 The Contract Time is the period of time allowed in the Contract Documents for completion of the Work.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect when construction is sufficiently complete, in accordance with the Contract Documents, so the Borough may occupy the Work or designated portion thereof for the use for which it is intended.

8.1.4 The term day as used in the Contract Documents shall mean calendar day.

8.2 PROGRESS AND COMPLETION

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

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall complete it within the Contract Time.

8.2.3 The date for Substantial Completion as defined in Sub-Paragraph 8.1.3 shall be as stated in Division 1, General Requirements, as modified by applicable Change Orders. The Borough reserves the right to use or occupy the space, or any part thereof, or use equipment installed under the Contract prior to final acceptance if the Contractor has not reached completion by the Contract Completion Date. The Borough shall not occupy any portion of space before stipulated date for completion, except with the approval of the Contractor. Date of Final Completion of the space as required by Division 1, General Requirements, is date when the Work is complete in all respects as required by the Contract Documents. At the time Substantial Completion has been established, a "Certificate of Substantial Completion" will be issued. Date of Substantial Completed stated on "Certificate of Substantial Completion" shall be used for assessing liquidated damages as applicable. Date of substantial completion shall be first day of warranty periods for all items approved at substantial completion inspection. Deficiency items shall not have their warranty periods begin until the date of final completion or until they have been corrected to the satisfaction of the Architect.

8.3 TIME EXTENSIONS FOR DELAY

8.3.1 If the Contractor is delayed by acts including an intentional or negligent act of the Borough or the Architect, or by intentional or negligent act of any employee of either, or by an intentional or negligent act of a separate contractor employed by the Borough, or by the processing of a Change Order or by additional work required by a change in the Work, the Contractor's sole remedy shall be a time extension for the completion of the Work. However, this paragraph does not exclude the Borough recovering from the Contractor money damages that result from the Contractor causing delay.

8.3.2 However, the Contractor's right to proceed shall not be terminated nor the Contractor charged with resulting damage if (1) the Contractor is delayed in the completion of the Work arising from causes beyond the control and without the fault or negligence of the Contractor, limited to the following: intentional or negligent act of the Borough or the Architect; by any

employee of either; by a separate contractor employed by the Borough, by Change Orders in the Work (pursuant to Article 12), earthquakes, fires, floods, acts of a public enemy, then the time for completion of the contract shall be extended by a change order for such reasonable time as the Project Manager may determine; and (2) the Contractor, whenever possible at least ten days before the beginning of the delay occurs, notifies the Project Manager in writing, or, if the delay was not reasonably foreseeable then the Contractor notifies the Project Manager in writing within ten days from the beginning of such delay; and (3) the Contractor provides a written estimate of the number of days the Project will be delayed.

8.3.3 Unforeseeable weather conditions, and other causes of delay not set forth in Subparagraph 8.3.2 above shall not constitute a basis for a time extension, nor for money damages for delay.

8.4 DAMAGES FOR DELAY IN COMPLETION: LIQUIDATED OR ACTUAL

8.4.1 The Borough has made a reasonable estimate of the harm caused to the Borough by delay in completion of the contract, based upon information available to the Borough at the time of the contract. The Borough's best and reasonable estimate, based upon economic loss to the Borough is in the amount set forth in the agreement. For each calendar that any work remains uncompleted after time for completion as set forth in this contract, liquidated damages in the that amount shall be deducted per day from any money due the contractor under this contract. This amount is not a penalty, but is based on the reasonable estimate of the harm caused to the Borough which is difficult or impossible to accurately ascertain.

8.4.2 Because circumstances may occur which were not known to, not foreseen by or foreseeable by the Borough at the time of entering into the contract, actual damages for delay in performance of the contract may be greater than the liquidated damages amount set forth above. In the event actual damages for delay in the Project prove to be greater than the amount of liquidated damages set forth above, the Borough, at its sole option, may elect to prove actual damages for delay and the Contractor shall be liable for actual damages which are greater than the liquidated damages, and in lieu of the liquidated damages, based on such proof.

8.4.3 Permitting the Contractor to continue and finish work or any part it after the time fixed for its completion by the contract or any written amendment therefore

shall not constitute a waiver by the Borough's rights to liquidated or actual damages.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and is the total amount payable by the Borough to the Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values of the various portions of the Work, including quantities if required by the Architect, aggregating the total Contract Sum, divided so as to facilitate payments to Subcontractors in accordance with Paragraph 9.4.3.1, prepared in such form as specified or as the Architect and the Contractor may agree upon, and supported by such data to substantiate its correctness as the Architect may require. Each item in the schedule of values shall include its proper share of overhead and profit. This schedule, when approved by the Architect, shall be used only as a basis for the Contractor's Applications for Payment.

9.2.2 Schedule of Values must be submitted as soon as practical after the award of the Contract. In all cases Schedule of Values must be submitted at least 15 days prior to the first Application For Payment. The Schedule of Values must show a complete breakdown of all phases of the Work required by the Contract Documents. In preparing Schedule of Values, Contractor shall establish a value for each item of work, including all applicable profit and overhead and supported by such data as the Architect or Project Manager may require. This schedule, unless objected to by the Architect or Project Manager, shall be used as a basis for the Contractor's application for payment.

9.2.3 Contractor shall establish his cash flow requirements throughout the anticipated life of the Project. This information shall be submitted along with the schedule of values. The cash flow information shall address itself to a monthly cash flow requirement based on the Progress Schedule and Schedule of Values.

9.3 PROGRESS PAYMENTS

9.3.1 On or about the first day of each month the Contractor shall submit to the Architect an itemized Application for Payment, based on Schedule of Values, for a period from the first day of the month through the last day of the month. Application for Payment shall be executed and submitted in three copies on forms furnished by the Architect. Application to be supported by such data substantiating the Contractor's right to payment, as the Borough and Architect may require. In all cases where the application includes a request for payment of stored material, an itemized listing of such material, substantiated by invoices for the material, shall be attached to the Application for Payment and the total listed on the Application for Payment under the line provided for "Stored Materials."

If any stored materials are claimed which are not stored on the construction site, itemized location must be available for inspection of the materials. Approval must be granted by the Borough and the Architect of any location for stored materials other than the construction site prior to submittal of Application for Payment. After payment request has been submitted, correctly certified and approved, payment will be made for 90% of the work completed and materials suitably stored. Upon Substantial Completion of the entire Work, payment will be made in an amount sufficient to increase the total payment to 95% of the Contract Sum, less such retainages as the Architect shall determine for all incomplete work and unsettled claims. At the time of Final Payment Request, not less than 2% of the total Contract amount shall be retained to assure satisfactory completion of all Contractual obligations and will not be paid until all work has been completed, and all submittals made, properly certified and approved.

After 50% of the work has been completed, the Architect, if he finds that satisfactory progress is being made, may limit the retainage withheld to an amount equivalent to 5% of the bid amount so long as progress and quality of work produced remain satisfactory. If at any time following such reduction in retainage the Architect finds that the rate of progress or quality of work produced, or both has become unsatisfactory, an amount equivalent to 10% of all work in place shall be deducted from the next progress estimate, and from all future progress estimates until the deficiencies in progress, or work or both, have been satisfactorily corrected.

9.3.2 If payments are to be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing, such payments

shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Borough to establish the Borough's title to such materials or equipment or otherwise protect the Borough's interest including applicable insurance and transportation to the site.

9.3.3 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Borough upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interest or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor; or by any other person performing the Work at the site of furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 If the Contractor has made Application for Payment as above, the Architect will, with reasonable promptness but not more than seven days after the receipt of the Application, issue a Certificate for Payment to the Borough, with a copy to the Contractor, for such amount as he determines to be properly due, or state in writing his reasons for withholding a Certificate as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Borough, based on his observations at the site as provided in Subparagraph 2.2.4 and the data comprising the Application for Payment, that the work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified. In addition, the Architect's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractors being entitled to final payment as set forth in Subparagraph 9.7.2 have been fulfilled.

9.4.3 After the Architect has issued a Certificate for Payment, the Borough shall make payment within 30 days.

9.4.3.1 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Borough out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which said Subcontractor is entitled reflecting the percentage actually retained, if any, from the payments to the Contractor on account of each Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-Subcontractors in similar manner.

9.4.3.2 The Architect may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of the completion or the amounts applied for by the Contractor and the action taken thereon by the Architect on account of the Work done by such Subcontractor.

9.4.3.3 Neither the Borough nor the Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor.

9.4.4 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Borough, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.5 PAYMENTS WITHHELD

9.5.1 The Architect may decline to approve an Application for Payment; and may withhold his Certificate in whole or in part, to the extent reasonably necessary to protect the Borough, if in his opinion he is unable to make representations to the Borough as provided in Subparagraph 9.4.2. The Architect may also decline to approve any Applications for Payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any Certificates for Payment previously issued, to such extent as may be necessary in his opinion to protect the Borough from loss because of:

1. defective work not remedied,
2. third party claims filed or reasonable evidence indicating probable filing of such claims,

3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
4. reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum,
5. damage to another Contractor,
6. reasonable indication that the Work will not be completed within the Contract Time, or
7. unsatisfactory prosecution of the Work by the Contractor,
8. work performed by subcontractor, which subcontractor has not been approved by Architect or Borough, and
9. failure of Contractor to submit updated Monthly Progress Schedule with Application for Payment.

9.5.2 The Contractor agrees that he will indemnify, defend and save the Borough harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The Contractor shall, at the Borough's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have to be paid, discharged, or waived. If the Contractor fails to do so, then the Borough may, after have served written notice on the said Contractor, either pay unpaid bills, of which the Borough has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Borough to either Contractor or his Surety.

In paying any unpaid bills of the Contractor, the Borough shall not be liable to the Contractor for any such payment made in good faith.

9.6 FAILURE OF PAYMENT

9.6.1 If the Architect should fail to issue any Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Borough should fail to pay the Contractor within seven days after the date of payment established in the Agreement any amount certified by the Architect then the Contractor may, upon seven additional days' written notice to the Borough and the Architect, stop the Work until payment of the amount owing has been received.

9.7 SUBSTANTIAL COMPLETION AND FINAL PAYMENT

9.7.1 When the Contractor determines that the Work or a designated portion thereof acceptable to the Borough is substantially complete, the Contractor shall prepare for submission to the Architect a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect on the basis of an inspection determines that the Work is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Borough and the Contractor for maintenance, heat, utilities, and insurance, and shall fix the time within which the Contractor shall complete the items listed herein. The Certificate of Substantial Completion shall be submitted to the Borough and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.7.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when he finds the work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable.

9.7.3 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Architect (1) an Affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the Borough or his property might in any way be responsible, have been paid or otherwise satisfied, (2)

consent of Surety, if any, to final payment, and (3) if required by the Borough, other data establishing payment in satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Borough. If any Subcontractor refuses to furnish a release or waiver required by the Borough, the Contractor may furnish a bond satisfactory to the Borough to indemnify and defend him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Borough all monies that the Borough may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Contractor shall submit in duplicate Contractor's Affidavit of Payment of Debts and Claims, and/or Contractor's Affidavit of Release of Liens, and/or Consent of Surety Company to Final Payment as may be required by the Borough.

9.7.4 If after Substantial Completion of the Work final completion thereof is materially delayed through no fault of the Contractor, and the Architect so confirms, the Borough shall, upon certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Subparagraph 7.5.1, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.7.5 The making of final payment shall constitute a waiver of all claims by the Borough except those arising from:

1. unsettled liens,
2. faulty or defective work appearing after Substantial Completion,
3. failure of the Work to comply with the requirements of the Contract Documents, or
4. terms of any guarantees required by the Contract Documents.

9.7.6 Acceptance of final payment shall constitute a waiver of all claims by the Contractor except those

previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

9.8 USE OF PROJECT

9.8.1 The Borough shall have the right to take possession of and to use any completed or partially completed portions of the building even though the time of completing the entire work or such portion thereof may not have expired and such use shall not constitute acceptance thereof. The occupancy shall not unreasonably interfere with the operations of the Contractor.

9.9 INSPECTION FOR SUBSTANTIAL COMPLETION AND INSPECTION FOR FINAL COMPLETION

9.9.1 At the time that the Contractor determines that the Project has reached a point to be considered Substantially Complete, he shall request in writing to the Architect, with a copy to the Borough, an inspection of Substantial Completion. Request for inspection must be made at least fourteen (14) days prior to the date on which the Work will be ready for inspection.

9.9.2 At such time as the Contractor has determined that the Project has reached the state of Final Completion of all portions, in accordance with the Contract Documents, he shall request an inspection for Final Completion.

9.9.3 Any delay in making inspections under 9.9.1 and 9.9.2 shall not relieve the Contractor of responsibility for the Work, or entitle him to compensation due to continuing overhead, maintenance, and other costs caused by the delay.

9.9.4 If the Architect making the inspection finds the Work so far from complete as to make a later visit necessary to establish a date of Substantial Completion or Final Completion, the Contractor shall be liable for the expense to the Borough incurred for reinspection. If, at the time of inspection, the Project is found to be Substantially Complete or if Final Completion has been reached, a Certificate of Substantial Completion shall establish the date for commencement of the one-year warranty of all Work included in the Contract.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. all employees working on the Project and all other persons who may be affected thereby,
2. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-Subcontractors,
3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction, and
4. the Contractor shall physically barricade any excavation that is over three feet deep.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the Borough and users of adjacent utilities.

10.2.3 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.4 The Contractor shall promptly remedy all damage or loss to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Borough or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.18.

10.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Borough and the Architect.

10.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11

INSURANCE

11.1 CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE. The Contractor shall not commence Work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Borough, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until the insurance required of the Subcontractor has been so obtained and approved.

11.1.1 WORKER'S COMPENSATION INSURANCE. The Contractor shall procure and shall maintain during the life of this Contract Worker's Compensation Insurance as required by applicable State law for all of his employees to be engaged in work at the site of the

Project under this Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employee engaged in hazardous work on the Project under this Contract is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

11.1.2 CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE AND VEHICLE LIABILITY INSURANCE. The Contractor shall procure and shall maintain during the life of this Contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amounts specified in the Supplemental General Conditions.

11.1.3 SUBCONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE AND VEHICLE LIABILITY INSURANCE. The Contractor shall either (1) require each of his Subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Supplemental General Conditions specified in Clause 11.1.3 hereof, or, (2) insure the activities of his Subcontractors and subcontractors in his policy, as specified in Clause 11.1.2 hereof.

11.1.4 SCOPE OF INSURANCE AND SPECIAL HAZARDS. The insurance required under Clauses 11.1.2 and 11.1.3 hereof shall provide adequate protection for the Contractor, his Subcontractors, and subsubcontractors respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or any anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this Contract as enumerated in the Supplemental General Conditions.

11.1.5 BUILDER'S RISK INSURANCE (FIRE AND EXTENDED COVERAGE). The Contractor shall procure and shall maintain during the life of this Contract Builder's Risk Insurance (Fire and Extended Coverage) on a 100% completed value basis on the insurable portion of the Project. The Borough, the Contractor,

and Subcontractors (as their interests may appear) shall be named as the Insured.

11.1.6 PROOF OF CARRIAGE OF INSURANCE. The Contractor shall furnish the Borough with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statements: "The insurance covered by this certificate will not be canceled or materially altered, except after sixty (60) days' written notice has been received by the Borough." The Borough may require submittal for review and approval of all insurance policies required by the Contract.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor executed by the Borough, issued after execution of the Contract, authorizing a change in the Work or adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order executed in accordance with MSB Code 3.08.150. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment to the Contract Sum or the Contract Time.

12.1.2 The Borough, without invalidating the Contract and without notice to the sureties, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by the Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the Borough resulting from a change in the Work shall be determined in one or more of the following ways:

1. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiation data to permit evaluation,
2. by unit prices stated in the Contract Documents, or subsequently agreed upon, or

3. by cost and a mutually acceptable fixed or percentage fee.

12.1.4 If none of the methods set forth in Subparagraph 12.1.3 is agreed upon, the Contractor, provided he receives an executed Change Order, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Architect on the basis of the Contractor's direct costs, including, in the case of an increase in the Contract sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 12.1.3.3 above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Pending final determination of cost to the Borough, payments on account shall be made on the Architect's Certificate of Payment. The amount of credit to be allowed by the Contractor to the Borough for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease as confirmed by the Architects. When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increases, if any.

"Cost" of the Contractor's work shall be as follows:

A. Cost defined:

- a. Direct costs are defined as the net cost to the Contractor resulting from the accomplishment of a given change. These include cost of materials including sales tax and tax for delivery; cost of direct labor including FICA and Employment Security Contribution and Worker's Compensation Insurance payment; cost of rental of tools and power equipment. Bond costs are considered part of direct costs. Direct costs do not include such items as superintendent time, foreman time, project manager time, project engineer time, secretarial time, owned tools, equipment, and other field office expenses, home office expenses, or overhead and related expenses. The above noted costs are considered to be indirect costs as noted below. This list is not intended to be all inclusive but representative of the types of items that are not to be considered direct expense.
- b. Indirect costs are defined as general operational charges which the Borough

cannot readily determine to be from the accomplishment of a given change. The Borough will treat those costs as part of combined overhead and profit. Indirect costs include such items as superintendent time, foreman time, project manager time, project engineer time, secretarial time, owned tools, equipment, and other field office expenses, home office expenses, overhead and related expenses. This list is not intended to be all inclusive but representative of the type of items that are to be considered indirect costs.

B. Overhead and Profit:

"Reasonable allowance for overhead and profit" shall be defined as: 15% of the contractor's direct costs on a change order; 10% of the Contractor's cost for direct costs due to a subcontractor for a change order; and 15% of the subcontractor's direct costs on a change order for work he performed.

A Subcontractor's overhead and profit is not considered part of the direct costs of the work.

A. Deductive Changes:

When changes are deductive, overhead and profit shall be 5% of the direct costs of the Contractor's deleted own work and 5% of the direct costs of the subcontractor's deleted own work.

12.2 NOTICE OF CLAIMS

12.2.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, the he must immediately begin keeping complete, accurate and specific daily records concerning every detail of the potential claim including actual costs incurred. He shall give the Architect written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Subparagraph 10.3.1. No such claim shall be valid unless so made and the claim must comply with and is governed by paragraphs 2.3.10.1, 2.3.10.2, 2.3.10.3, 2.3.10.4 and 2.3.10.5. Any change in the Contract Sum resulting from such claim shall be authorized only by a written Change Order.

12.3 MINOR CHANGES IN THE WORK

12.3.1. The Architect along with the written concurrence of the Project Manager shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract time and not inconsistent with the intent of the Contract Documents. Such changes may be effected by Field Order or by other written order. Such changes shall be binding on the Borough and the Contractor.

12.4 FIELD MEMOS

12.4.1 The Architect along with the written concurrence of the Project Manager may issue written Field Memos which interpret the Contract Documents in accordance with Subparagraph 1.2.5 or which order minor changes in the Work in accordance with Paragraph 12.3 without change in Contract Sum or Contract Time. The Contractor shall carry out such Field Memo promptly.

ARTICLE 13

UNCOVERING AND CORRECTING OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any Work should be covered contrary to the request of the Architect, it must, if required by the Architect, be uncovered for his observation and replaced, at the Contractor's expense.

13.1.2 If any other Work has been covered which the Architect has not specifically requested to observe prior to being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Borough. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by a separate contractor employed as provided in Article 6, and in that event the Borough shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or

not fabricated, installed or completed. The Contractor shall bear all costs of services thereby made necessary.

13.2.2 If, within one year after the Date of Substantial Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Borough to do so unless the Borough has previously given the Contractor a written acceptance of such condition. The Borough shall give such notice promptly after discovery of the condition. "Such condition" is to be interpreted as one specific item of work. Acceptance by the Borough or final payment shall not relieve the Contractor from responsibility for guarantees and correction of work.

13.2.3 All such defective or non-conforming Work under Clauses 13.2.1 and 13.2.2 shall be removed from the site if necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Borough.

13.2.4 The Contractor shall bear the cost of satisfactorily replacing or repairing all work of separate contractors destroyed or damaged by such removal or correction.

13.2.5 If the Contractor does not remove such defective or non-conforming Work within a reasonable time fixed by written notice from the Architect, the Borough may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Borough may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds hereof, including compensation for additional architectural services. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Borough.

13.2.6 If the Contractor fails to correct such defective or non-conforming Work, the Borough may correct it in accordance with Paragraph 3.4.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Borough prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Sum, or, if the amount is determined after final payment, it shall be paid by the Contractor.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the Work is stopped for a period of thirty days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, or if the Work should be stopped for a period of thirty days by the Contractor for the Architect's failure to issue a Certificate for Payment as provided in Paragraph 9.6 or the Borough's failure to make payment thereon as provided in Paragraph 9.6, then the Contractor may, upon seven days' written notice to the Borough and the Architect, terminate the Contract and recover from the Borough payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages in accordance with the provisions and limitation of Paragraphs 12.1.3 and 12.1.4.

14.2 TERMINATION BY THE BOROUGH

14.2.1 If the Contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract documents, then the Borough may, without prejudice to any right or remedy and after giving the Contractor and his Surety, if any, seven days' written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the

Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect's additional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Borough. The costs incurred by the Borough as herein provided shall be certified by the Architect.

End of General Conditions

SECTION VII

SUPPLEMENTARY CONDITIONS

SUPPLEMENTARY GENERAL CONDITIONS

CONFLICT WITH GENERAL

This Section supplements the General Conditions of the Contract for Construction and, if in conflict, supersedes the conflicting item. Where any article, paragraph, subparagraph, or clause is modified or deleted by these supplements, the unaltered provision of the article, paragraph, subparagraph, or clause shall remain in effect.

SGC 1. CONTRACT DOCUMENTS (REFERENCE GENERAL CONDITIONS, ARTICLE 1)

- A. Change 1.2.5: "14 calendar days" in this section to read: 7 calendar days."
- B. Change 1.3.1 to read as follows: "The Contractor will be supplied with one CD with all documents included, free of charge. Additional CD's will be furnished upon request at actual cost."

SGC 2 – ARCHITECT (REFERENCE GENERAL CONDITIONS, ARTICLE 2)

(Not Used)

SGC 3. OWNER (REFERENCE GENERAL CONDITIONS, ARTICLE 3)

(Not Used)

SGC 4. CONTRACTOR (REFERENCE GENERAL CONDITIONS, ARTICLE 4)

- A. Add 4.6.3: "All Contractors submitting a bid for this Contract shall have in effect Alaska Business License, Contractor's License as required by Laws of Alaska, and a Matanuska-Susitna Borough Business License prior to contract execution. Contractor shall notify Project Manager, in writing, of any license, which is cancelled, or not renewed at time of expiration during the term of the Contract. Contractor shall be responsible for any additional licenses and/or permits required in the locality of the Work. General Contractor shall further be responsible for current licenses for all subcontractors and suppliers, as required by law, during the term of the Contract and provide proof thereof."

SGC 5. SUBCONTRACTORS (REFERENCE GENERAL CONDITIONS, ARTICLE 5)

Change 5.2.1 to read as follows.: By the end of the first day following notification, the Contractor shall deliver to the Borough the list of subcontractors proposed for the work. Subcontractors shall be listed on the form that occurs at the end of the Supplementary General Conditions. This list is titled, "Subcontractors and Suppliers". The Contractor shall not enter into any agreement with any person or entity to whom the Borough has made reasonable objection prior to execution of this agreement. Only those sub-contractors and suppliers listed, and approved by the Borough, in the document entitled "Proposed Subcontractors and Suppliers" and incorporated in this contract shall be used. Any contract involving firms or suppliers not contained on this approved list must be approved by the borough in writing prior to use in this contract. Failure of the Borough to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Borough has made reasonable objection under the provisions of Subparagraph 5.2.1.

5.2.3 If the Borough has reasonable objections to any such proposed person or entity, the Contractor shall submit a substitute to whom the Borough has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in the cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively to submitting names as required by Subparagraph 5.2.1.

SGC 6. SEPARATE CONTRACTS (REFERENCE GENERAL CONDITIONS, ARTICLE 6)
(Not Used)

SGC 7. MISCELLANEOUS PROVISIONS (REFERENCE GENERAL CONDITIONS, ARTICLE 7)
(Not Used)

SGC 8. TIME (REFERENCE GENERAL CONDITIONS, ARTICLE 8)

- A. Substantial Completion is set at 335 days after NTP, with Final Completion 30 days after substantial completion.
- B. Add to 8.4.1 Before last sentence of paragraph: For each calendar day that any work remains uncompleted after time for completion set forth in this Contract, liquidated damages in the amount of \$250.00 shall be deducted from any money due the Contractor under this Contract.

SGC 9. PAYMENTS AND COMPLETION (REFERENCE GENERAL CONDITIONS, ARTICLE 9)

- A. Add to 9.7.3: "Contractor shall submit in duplicate 'Contractor's Affidavit of Payment of Debts and Claims', 'Contractor's Affidavit of Release of Liens', and 'Consent of Surety Company to Final Payment' **before final payment.**

SGC 10. PROTECTION OF PERSONS AND PROPERTY (REFERENCE GENERAL CONDITIONS, ARTICLE 10)
(Not Used)

SGC 11. INSURANCE (REFERENCE GENERAL CONDITIONS, ARTICLE 11)
(Not Used)

SGC 12. CHANGES IN THE WORK (REFERENCE GENERAL CONDITIONS, ARTICLE 12)

- A. Change 12.1.4(B) to read as follows: Reasonable allowance for overhead and profit" shall be defined as: 10% of the contractor's direct costs on a change order; 10% of the Contractor's cost for direct costs due to a subcontractor for a change order; and 10% of the subcontractor's direct costs on a change order for work he performed.

SGC 13. UNCOVERING AND CORRECTING OF WORK (REFERENCE GENERAL CONDITIONS, ARTICLE 13)

- A. 13.2.2: Insert after 'Date of Substantial Completion' "or Date of Final Completion."

SGC 14. TERMINATION OF THE CONTRACT (REFERENCE GENERAL CONDITIONS, ARTICLE 14)

(Not Used)

End of Supplementary General Conditions

SECTION VIII

SAMPLE FORMS

MATANUSKA-SUSITNA BOROUGH BID NO: _____

BID BOND

KNOW ALL MEN BY THESE PRESENT, that we, the undersigned, _____ as Principal, and _____ as Surety, are hereby held and firmly bound unto Matanuska-Susitna Borough, Palmer, Alaska as OWNER in the penal sum of _____ for the payment of which, will and truly to be made, will hereby jointly and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 20XX.

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

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto properly completed in accordance with said BID, and shall furnish a BOND for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith,

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

The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and the Surety has caused their seal to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Bond must be acceptable to Matanuska-Susitna Borough.

Principal (L.) _____
Surety

By: _____ By: _____

IMPORTANT: Surety Companies executing bonds must be authorized to transact business in the state of Alaska where this project is located. **INDIVIDUAL SURETY BONDS ARE NOT ACCEPTABLE.**

BID #19-064B

PALMER POOL IMPROVEMENTS

PROPOSED SUBCONTRACTORS AND SUPPLIERS

NOTE: If your company is the apparent low bidder, this list is to be delivered to the borough within 24 hours of request from the Purchasing Division. Put an 'X' or '√' in the right columns indicating if the company is a sub-contractor or a supplier.

#	ITEM	CONTRACTOR NAME AND ADDRESS	SUB	SUP
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				

SIGNATURE

COMPANY NAME

DATE

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS,

That _____ as Contractor, and _____, as Surety, are held and firmly bound unto Matanuska-Susitna Borough, Palmer, Alaska, hereinafter called OWNER in the sum of _____ dollars, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Contractor has been awarded and is about to enter into the annexed contract with said OWNER to perform all work required under the Bidding Schedule(s) _____.

NOW THEREFORE, if said Contractor, or subcontractors, fails to pay for any materials, equipment, or other supplies, or for rental of same, used in connection with the performance of work contracted to be done, or for amounts due under applicable State law for any work or labor thereon, said Surety will pay for the same in an amount not exceeding the sum specified above and, in the event suit is brought upon this bond, a reasonable attorney's fee to fixed by the court. This bond shall insure to the benefit of any persons, companies or corporation entitled to file claims under applicable State law.

Provided, that any alterations in the work to be done or the materials to be furnished, which may be made pursuant to the terms of said Contract, shall not in any way release either said Contractor or said Surety thereunder, nor shall any extensions of time granted under the provisions of said Contract release either said Contractor or said Surety, and notice of such alterations or extensions of the Contract is hereby waived by said Surety.

Signed, this _____ day of _____, 20_____.

(SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

(Contractor)

by: _____
(Signature)

(Agent)

(Surety)

by: _____
(Signature)

by: _____
(Signature)

Address: _____

Address: _____

Telephone No. _____

Telephone No. _____

IMPORTANT: Surety Companies executing bonds must be authorized to transact business in the state of Alaska where this project is located. **INDIVIDUAL SURETY BONDS ARE NOT ACCEPTABLE.**

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS,

That _____ as Contractor, and _____, as Surety, are held and firmly bound unto Matanuska-Susitna Borough, Palmer, Alaska, hereinafter called OWNER in the sum of _____ dollars, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Contractor has been awarded and is about to enter into the annexed contract with said OWNER to perform all work required under the Bidding Schedule(s) _____ of the Owner's specifications, entitled _____.

NOW THEREFORE, if said Contractor shall perform all the requirements of said contract required to be performed on his part, at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

THE Surety hereby waives notice of any alteration or extension of time made by the Owner.

WHENEVER Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions, or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount previously paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed, this _____ day of _____, 20_____.

(SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

(Contractor)

by: _____
(Signature)

(Agent)

by: _____
(Signature)

Address: _____

Telephone No. _____

(Surety)

by: _____
(Signature)

Address: _____

Telephone No. _____

IMPORTANT: Surety Companies executing bonds must be authorized to transact business in the state of Alaska where this project is located. **INDIVIDUAL SURETY BONDS ARE NOT ACCEPTABLE.**

**CONSENT OF
SURETY COMPANY
TO FINAL PAYMENT**

OWNER
ARCHITECT
CONTRACTOR
SURETY
OTHER

PROJECT:
(name, address)

TO (Owner)

Γ

⌈

ARCHITECT'S
PROJECT NO:
CONTRACT FOR:

L

⌋

CONTRACT

DATE:

CONTRACTOR:

In accordance with the provisions of the Contract between the owner and the Contractor as indicated above, the

(here insert name and address of Surety Company)

, SURETY COMPANY,

on bond of (here insert name and address of Contractor)

, CONTRACTOR,

hereby approves the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety Company of any of its obligations to (here insert name and address of Owner)

, OWNER,

as set forth in the said Surety Company's bond.

IN WITNESS WHEREOF,
the Surety Company has hereunto set its hand this _____ day of _____ 20__

Surety Company

Attest:
(Seal)

Signature of Authorized Representative

Title

PROJECT NAME: _____

BID NUMBER: _____

CONTRACTOR'S RELEASE AND AFFIDAVIT OF PAYMENTS OF DEBTS AND CLAIMS

The undersigned, being first duly sworn deposes and says:

1. That pursuant to this contract for project _____ between the undersigned and the Matanuska-Susitna Borough dated _____ the undersigned hereby certifies that, except as listed below, he has paid in full or has otherwise satisfied all obligations for materials and equipment furnished for all work, labor, and services performed and for all known indebtedness and claims for which the Contractor or the Matanuska-Susitna Borough is or may become liable in connection with performance under this contract. The Contractor warrants that he has made diligent search and inquiry to determine the existence of any such claim, debt or liability and that all such obligations, whether liquidated, unliquidated or disputed, have been satisfied.

2. The Contractor further certifies he did not extend any loan, gratuity, or gift of money of any form whatsoever to any employee or agent of the Borough, that he did not rent or purchase any equipment or materials from any employee of the Borough, nor to the best of his knowledge, from any agent of any employee of the Borough, and that he has not made any promise to an employee or agent of the Borough to do or undertake any such action after completion of the subject contract.

3. Pursuant to the above-described contract and in consideration of the final payment in the amount of \$ _____, the undersigned Contractor hereby remise, release and discharge the Matanuska-Susitna Borough, its officers, agents and employees of and from any and all further claim, debt, charge, demand, liability or other obligation whatsoever under or arising from said contract, whether known or unknown and whether or not ascertainable at the time of the execution of this instrument except specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:

_____.

The Contractor, in connection with the claims which are not released as set forth above, certifies that he has or agrees that he will comply with all the provisions of the said contract, including without limitation those provisions relating to notification of the contracting officer and relating to the prosecution of claims.

4. The Contractor shall indemnify, defend, and hold and save the Borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character, including costs, expenses, and attorney fees. The Contractor shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances,

constitutions or other laws, rules or regulations, contractual claims, or any other kind of loss, tangible or sustained by any person, or property arising from Contractor's or Contractor's Officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform this Agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the Borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, Contractor shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the Borough, its agents, or employees.

If any portion of this clause is voided by law or court of competent jurisdiction, the remainder of the clause should remain enforceable.

IN WITNESS WHEREOF, this release and affidavit has been executed this _____ day of _____, 20XX.

signature) _____ (Contractor's

Title _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20XX.

Notary Public
My commission expires: _____

(NOTE: In case of a corporation, the attached Certificate of Authority must be completed by a corporate officer other than the one who signs above.)

CERTIFICATE OF AUTHORITY

I, _____, certify that I am the
_____ (official title) of the corporation named as
Contractor in the foregoing release and affidavit; that _____
who signed said release and affidavit on behalf of the Contractor was then
_____ (official title) of said corporation; that said release and
affidavit was duly signed for and in behalf of said corporation by authority of its governing
body and is within the scope of its corporate powers.

(Signature)

Notary Public for
My commission expires: _____

MATANUSKA-SUSITNA BOROUGH
350 EAST DAHLIA AVENUE
PALMER, ALASKA 99645

FIELD MEMO

(Number)

(Project)

(Date)

REFERENCE: (Drwg. or Spec.) _____

DESCRIPTION:

(Source)

(Date)

RESPONSE:

RESPONSE NEEDED BY: _____

ACTION REQUIRED BY: _____

RESOLUTION:

Notification must be given in accordance with the contract documents, if any architect/engineer response/description causes any change to contract documents.

SECTION IX

NOTICE TO CONTRACTORS

NOTICE TO CONTRACTORS

Please visit the state of Alaska Department of Labor web site for the current and applicable published state documents at:

<http://www.labor.state.ak.us/lss/lssforms.htm>

SECTION X

ATTACHMENTS

Attachment 1	Palmer Pool Improvements Project Manual Vol. 1	(600 Pages)
Attachment 2	Palmer Pool Improvements Project Manual Vol. 2	(452 Pages)
Attachment 3	Palmer Pool Improvements Drawings Vol. 1	(64 Pages)
Attachment 4	Palmer Pool Improvements Drawings Vol. 2	(74 Pages)
Attachment 5	Palmer Pool Hazardous Material Inspection Report	(49 Pages)