



**UNALASKA CITY SCHOOL DISTRICT**

**Construction Services Agreement**

**EAGLE'S VIEW ELEMENTARY SCHOOL CARPET REPLACEMENT PROJECT**

**PROJECT NUMBER: SD17A**

**Prepared By:**

**Unalaska City School District  
P.O. Box 570  
Unalaska, Alaska 99685  
907.581.3151**

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May 5, 2017

**REQUEST FOR QUOTES**

**EAGLE’S VIEW ELEMENTARY SCHOOL CARPET REPLACEMENT PROJECT**

To Whom It May Concern:

The Unalaska City School District is requesting written quotes for the **EAGLE’S VIEW ELEMENTARY SCHOOL CARPET REPLACEMENT PROJECT**.

Quotes will be received through June 19, 2017 at the Unalaska City School District, 55 E. Broadway, PO Box 570, Unalaska, Alaska 99685. Any quotes received after the date specified may not be considered.

**I. THE WORK**

The Contractor shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows:

The work includes, but is not limited to, furnishing all labor, tools, equipment, travel costs, per diem, disposal fees, materials, and performing all operations in connection with the **EAGLE’S VIEW ELEMENTARY SCHOOL CARPET REPLACEMENT PROJECT**.

The work consists of the removal and disposal of existing carpet floor coverings and the procurement and installation of new carpet and pad per Attachment “A”, Scope of Work, and the following Floor Covering specification:

**MAINSTREET BY PHILADELPHIA GUSTO COLLECTION  
ZING / PLAYFUL 79408 WITH PAD**

**Project Location:** Eagle’s View Elementary School, 501 Broadway, Unalaska  
**Owner:** Unalaska City School District

**II. GENERAL PROVISIONS**

All work shall be subject to review and acceptance by the Unalaska City School District Superintendent or his designated representative, who shall evaluate the Contractor's work for compliance with the Agreement. The Unalaska City School District Superintendent has no duty to supervise or direct the performance of the work, nor any responsibility or liability for the acts or omissions of the Contractor or any Subcontractor or Supplier.

**III. SAFETY**

A. The Contractor shall do whatever work is necessary for overall project safety and be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during the Agreement period. This requirement shall apply continuously and is not limited to normal working hours.

- B. Safety provisions shall conform to Federal and State Departments of Labor Occupational Safety and Health Act (OSHA), and other applicable federal, state, county, and local laws, ordinances, codes, requirements set forth herein, and regulations. Where these are in conflict, the more stringent requirements shall apply. The Contractor shall become thoroughly familiar with governing safety provisions and shall comply with the obligations set forth therein.
- C. The Contractor shall develop and maintain for the duration of the Agreement, a safety program that will effectively incorporate and implement required safety provisions. The Contractor shall appoint a qualified employee who is authorized to supervise and enforce compliance with the safety program.
- D. The Unalaska City School District's duty to conduct construction review of the Contractor's performance does not include a review or approval of the adequacy of the Contractor's safety supervisor, safety program, or safety measures taken in, on, or near the construction site.
- E. As part of safety program, the Contractor shall maintain at its office or other well-known location at the job site, safety equipment applicable to the Work as prescribed by governing safety authorities, and articles necessary for giving first aid to the injured. The Contractor shall establish procedures for the immediate removal to a hospital or a doctor's care of persons who may be injured on the job site.
- F. The Contractor shall do all work necessary to protect the general public from hazards, including but not limited to equipment and operations.

#### **IV. LICENSE REQUIREMENTS**

The Contractor shall obtain a City of Unalaska Business License prior to commencement of the Work to the extent required by the City of Unalaska Code of Ordinances §9.04.020. Contractors and Subcontractors, in order to perform public work in the State of Alaska, are required to hold State of Alaska Contractor's licenses of the class required to perform the specified work. Contractors and Subcontractors are also required to hold current Alaska Business Licenses and City of Unalaska Business Licenses in order to perform public work in the State of Alaska. Contractor's License and Business License numbers, including City of Unalaska business license numbers, shall be inserted in the appropriate place on the Quote form. Evidence of Subcontractors' compliance with the above shall be submitted to the Unalaska City School District before starting subcontract work on Unalaska City School District Agreements.

#### **V. INSURANCE**

- A. The Contractor agrees to furnish the Unalaska City School District, before commencing any Physical Work related to this Agreement and as required elsewhere, the Certificates of Insurance as specified in these Documents. The Contractor further agrees that the amount stated herein includes specific consideration for the insurance coverage's, including contractual liability, specified.

- B. The Contractor shall carry and maintain throughout the life of this Agreement, at its own expense, insurance not less than the amounts and coverage herein specified, and the Unalaska City School District, its employees and agents shall be named as additional insured under the insurance coverage so specified and where allowed, with respect to the performance of the work. There shall be no right of subrogation against the Unalaska City School District or its agents performing work in connection with the work, and this waiver of subrogation shall be endorsed upon the policies. Insurance shall be placed with companies acceptable to the Unalaska City School District, and these policies providing coverage thereunder shall contain provisions that no cancellation or material changes in the policy relative to this project shall become effective except upon 30 days prior written notice thereof to the Unalaska City School District.
- C. Prior to commencement of the work, the contractor shall furnish certificates to the Unalaska City School District, in duplicate, evidencing that the Insurance Policy provisions required hereunder are in force. Acceptance by the Unalaska City School District of deficient evidence does not constitute a waiver of Agreement requirements.
- D. The Contractor shall furnish the Unalaska City School District with certified copies of policies upon request. The minimum coverages and limits required are as follows:
1. Workers' Compensation insurance in accordance with the statutory coverages required by the State of Alaska and Employers Liability insurance with limits not less than \$1,000,000 and, where applicable, insurance in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to the work, including but not limited to Voluntary Compensation, Federal Longshoremen and Harbor Workers Act, Maritime and the Outer Continental Shelf's Land Act.
  2. Commercial General Liability with limits not less than \$1,000,000 per Occurrence and \$2,000,000 Aggregate for Bodily Injury and Property Damage, including coverage for Premises and Operations Liability, Products and Completed Operations Liability, Contractual Liability, Broad Form Property Damage Liability and Personal Injury Liability. Coverage shall not contain any exclusion of Explosion, Collapse, or Underground. Coverage is to be endorsed to include a per project aggregate. Additionally, such insurance shall be considered primary to any other insurance carried by the Unalaska City School District and the insurer will endorse the policy accordingly.
  3. Commercial Automobile Liability on all owned, non-owned, hired and rented vehicles with limits of liability of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.
  4. If applicable, Contractor's Equipment insurance covering all of the contractor's equipment and machinery to be used in connection with the performance of the work specified in this Agreement. This coverage requirement may be waived at the discretion of the Unalaska City School

District if the Contractor self-insures the equipment and will waive all right of recovery against the Unalaska City School District in writing.

5. Umbrella/Excess Liability insurance coverage of not less than \$1,000,000 per occurrence and annual aggregate providing coverage in excess of General Liability, Auto Liability, and Employers Liability.
6. If work involves use of aircraft, Aircraft Liability insurance covering all owned and non-owned aircraft with a per occurrence limit of not less than \$1,000,000.
7. If work involves use of watercraft, Protection and Indemnity insurance with limits not less than \$1,000,000 per occurrence. Hull and Machinery coverage is to be carried on the vessel for the full current market value. This coverage requirement may be waived at the discretion of the Unalaska City School District if the Contractor self-insures the equipment and will waive all rights of recovery against the Unalaska City School District in writing.
8. Where applicable, Professional Liability insurance with limits of not less than \$1,000,000 per claim and \$1,000,000 aggregate, subject to a maximum deductible of \$10,000 per claim. The Unalaska City School District has the right to negotiate increase of deductibles subject to acceptable financial information of the policyholder.
9. Where applicable, Pollution Liability insurance with a project limit of not less than \$1,000,000 subject to a maximum deductible of \$10,000 to include coverage for Asbestos, Hazardous Materials, Lead or other related environmental hazards. The Unalaska City School District has the right to negotiate increase of deductibles subject to acceptable financial information of the policyholder.

In the event Asbestos, Hazardous Materials, Lead or other related environmental hazards are transported by vehicle and/or marine vessel, the operator of such vehicles and vessels shall provide a Certificate of Insurance for the transportation of such materials (including loading and unloading) with limits of not less than \$1,000,000.

10. Builder's Risk Insurance: Coverage shall be provided on an "All Risk" completed value basis and protect the interests of the Unalaska City School District, the contractor and his subcontractors. Coverage shall include all materials, equipment and supplies that are intended for specific installation in the project while such materials, supplies and equipment are located at the project site and in transit from port of arrival to job site and while temporarily located away from the project site.
- E. Any deductibles or self-insured retentions must be declared to and approved by the Unalaska City School District. At the option of the Unalaska City School District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as

respects the Unalaska City School District, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the Unalaska City School District guaranteeing payment of losses and related investigations, claim administration and defense expense.

- F. All insurance policies as described above except Professional Liability and Worker's Compensation, are required to be written on an "occurrence" basis. In the event occurrence coverage is not available, the Contractor agrees to maintain "claims made" coverage for a minimum of two years after project completion.
- G. If the Contractor employs Subcontractors to perform any work hereunder, the Contractor agrees to require such Subcontractors to obtain, carry, maintain, and keep in force during the time in which they are engaged in performing any work hereunder, policies of insurance which comply with the requirements as set forth in this section. This requirement is applicable to Subcontractors of any tier.
- H. The Contractor is required to maintain all certificates of insurance during the course of the project and for a minimum of three (3) years following the completion of such project. It is further agreed, that upon request by the Unalaska City School District, the Contractor will provide copies of any and all Subcontractor certificates of insurance for review of compliance.
- I. Failure by the Contractor to maintain the required insurance coverage or to comply with the above, may, at the option of the Unalaska City School District, be deemed Defective Work and remedied in accordance with the Agreement.

#### **VI. INDEMNIFICATION:**

- A. The Contractor and his Subcontractors will name the Unalaska City School District as "Additional Insured" and will provide a "Waiver of Subrogation".
- B. The Contractor shall indemnify, save harmless, and defend the Unalaska City School District and its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the Contractor's performance of this Agreement; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the negligence of the Unalaska City School District or its agents.

#### **VII. TIME OF COMPLETION**

The Contractor shall complete all work associated with this Agreement no later than **August 11, 2017**.

#### **VIII. STATUS OF WORK**

The Contractor shall keep the Unalaska City School District advised as to the status of work being performed by the Contractor and the details thereof. The Contractor shall maintain coordination with representatives of the Unalaska City School District. The Unalaska City School District or the Contractor may request and be granted a conference with the other party.

## **IX. MEASUREMENT AND PAYMENT**

The Contractor shall submit Applications for Payment in accordance with Article 13 of the General Conditions. Applications for Payment will be processed by the Unalaska City School District as provided in the General Conditions.

- A. Progress Payments. The Unalaska City School District shall make progress payments on account of the Contract Price on the basis of the Contractor's Applications for Payment on or about a day of the month mutually agreeable to the Unalaska City School District and the Contractor. All progress payments will be on the basis of the progress of the work measured by the actual installed quantity of items, plus allowances for stockpiled materials.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as the Unalaska City School District shall determine, or the Unalaska City School District may withhold, in accordance with Article 13 (paragraph 13.8) of the General Conditions.
    - a. Ninety percent of work completed.
    - b. Once 50 percent of the work is complete as determined by the Unalaska City School District, and if the character and progress of the work have been satisfactory to the Unalaska City School District, the Unalaska City School District, may determine that, as long as the character and progress of the work remain satisfactory to them, there will be no additional retainage on account of work completed; in which case, the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the work completed.
  2. Upon Substantial Completion, in an amount sufficient to increase total payments to the Contractor to 95 percent of the Contract Price, less such amounts as the Unalaska City School District shall determine, or the Unalaska City School District may withhold, in accordance with Article 13 of the General Conditions.
- B. Final Payment. Upon final completion and acceptance of the work in accordance with the General Conditions; Affidavit of Payment of Debts and Claims; Affidavit of Release of Liens; and Receipt of Consent of Surety Company to Final Payment, the Unalaska City School District shall pay the remainder of the Contract Price as provided in said Article 13.
1. Deductions. The Unalaska City School District may deduct from the amount of any payment made to the Contractor any sums owed to the Unalaska City School District by the Contractor including, but not limited to, past due sales tax, port and harbor fees, property tax, or rent. Before making any such deduction the Unalaska City School District shall have provided the Contractor written notice of the amount claimed by the Unalaska City School District to be due and owing from the Contractor.

**X. QUALIFICATIONS:**

The Contractor shall have pertinent experience with projects consisting of the same scope of work and contract amount as this Agreement. Upon request, the Contractor shall submit a list of successfully completed projects with the Request for Quotes, as well as contact names and numbers for the owners of the work completed.

**XI. REQUIREMENTS:**

The Contractor shall comply with all Alaska Department of Labor regulations including requirements to pay minimum wage rates as defined in AS 36.05 and AS 36.10. The Contractor shall comply with AS 36.10, as amended, which provides for preferential employment of Alaska residents.

# QUOTE PROPOSAL FORM

UNALASKA CITY SCHOOL DISTRICT

EAGLES' VIEW ELEMENTARY SCHOOL CARPET REPLACEMENT PROJECT

[PROJECT NUMBER SD17A]

(Contractor to Fill in and Submit to the Unalaska City School District)

ITEM NO.	UNIT	QUANT.	DESCRIPTION ( Write Unit Bid Price in Words)	UNIT PRICE	TOTAL PRICE
1	LUMP SUM	1	<hr/> Lump Sum/Unit Cost		

Total Price Quote: \_\_\_\_\_

Total Price Quote (in words): \_\_\_\_\_

Quoting Company: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Contractors License No. \_\_\_\_\_

Business License No. \_\_\_\_\_

**SCOPE OF WORK**

All work to be done as per Manufacturer's Recommendations and in accordance with good industry practices and standards.

All colors and patterns to be approved by owner's representative prior to commencement of work.

All areas to receive new carpet are the areas currently carpeted. Refer to the two plan sheets with yellow highlighting which indicates areas where old carpet shall be removed and new carpet shall be installed.

All furniture to be removed and replaced by the Owner's facilities maintenance staff by schedule developed with contractor prior to commencement of work.

Contractor may be requested to work nights and weekends in order to allow normal facility operations to continue during construction to the greatest extent possible at some facilities.

Contractor is responsible for calculating quantity of old carpet to be removed and quantity of new carpet to be installed and quantity of wall/cove base to be removed, salvaged, and reinstalled.

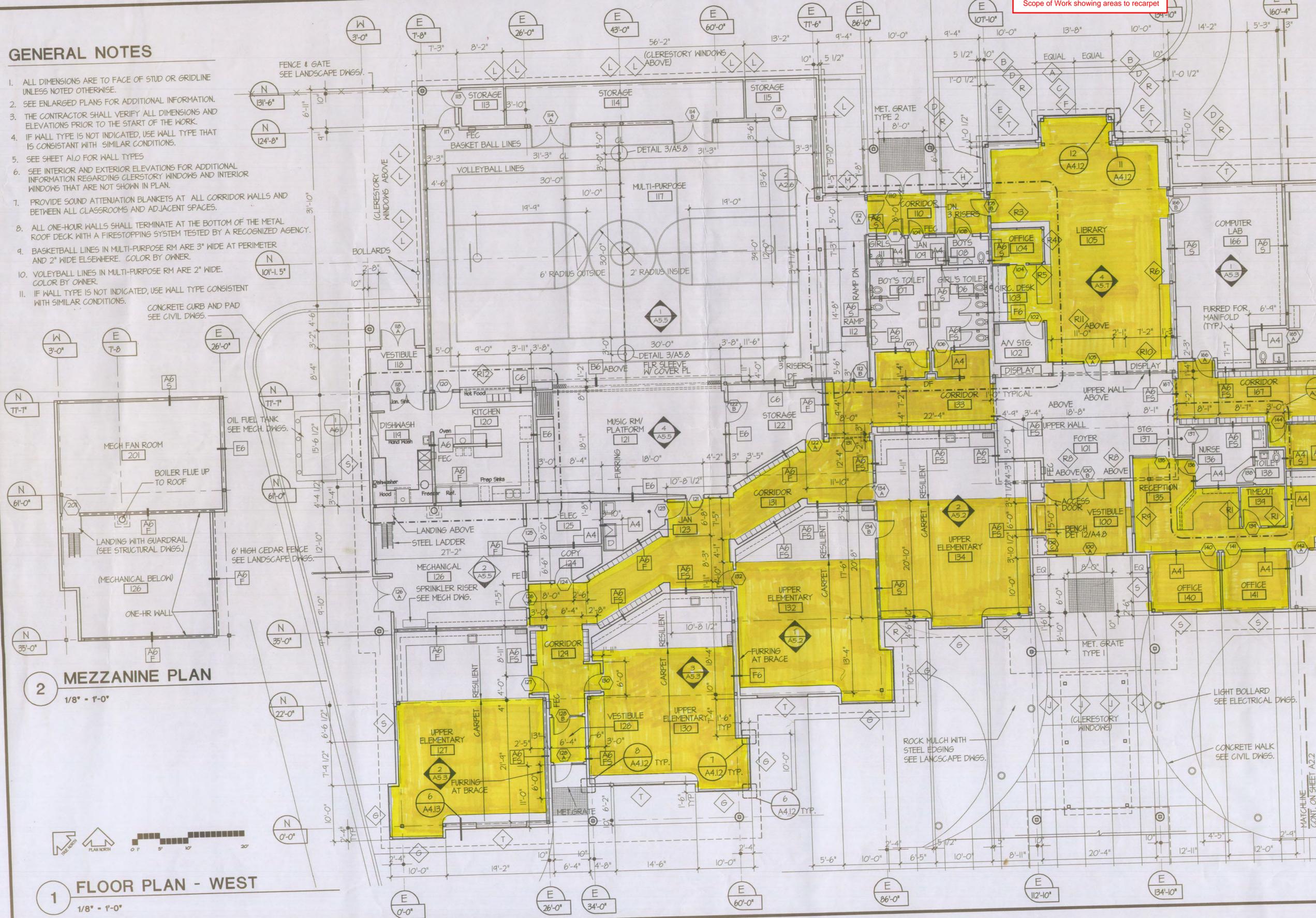
Project will replace existing carpet with new carpet squares.

- Remove existing carpet tile and carpet sheets.
- Where necessary, remove wall/cove base and save for reinstallation. Purchase and install new matching wall base in areas that salvaged wall base is damaged or unusable.
- Install new MAINSTREET BY PHILADELPHIA GUSTO COLLECTION ZING PLAYFUL 79408 WITH PAD carpet tiles in all areas shown in yellow highlighting on Attachment A.
- Install carpet per manufacturer's recommendations.
- Prepare floor substrate per recommended industry standards and carpet manufacturers recommendations.
- Repair wall surfaces to accept salvaged and/or new matching wall/cove base.

Attachment A  
Scope of Work showing areas to recarpet

### GENERAL NOTES

1. ALL DIMENSIONS ARE TO FACE OF STUD OR GRIDLINE UNLESS NOTED OTHERWISE.
2. SEE ENLARGED PLANS FOR ADDITIONAL INFORMATION.
3. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND ELEVATIONS PRIOR TO THE START OF THE WORK.
4. IF WALL TYPE IS NOT INDICATED, USE WALL TYPE THAT IS CONSISTANT WITH SIMILAR CONDITIONS.
5. SEE SHEET A1.0 FOR WALL TYPES
6. SEE INTERIOR AND EXTERIOR ELEVATIONS FOR ADDITIONAL INFORMATION REGARDING CLERESTORY WINDOWS AND INTERIOR WINDOWS THAT ARE NOT SHOWN IN PLAN.
7. PROVIDE SOUND ATTENUATION BLANKETS AT ALL CORRIDOR WALLS AND BETWEEN ALL CLASSROOMS AND ADJACENT SPACES.
8. ALL ONE-HOUR WALLS SHALL TERMINATE AT THE BOTTOM OF THE METAL ROOF DECK WITH A FIRESTOPPING SYSTEM TESTED BY A RECOGNIZED AGENCY.
9. BASKETBALL LINES IN MULTI-PURPOSE RM ARE 3" WIDE AT PERIMETER AND 2" WIDE ELSEWHERE. COLOR BY OWNER.
10. VOLLEYBALL LINES IN MULTI-PURPOSE RM ARE 2" WIDE. COLOR BY OWNER.
11. IF WALL TYPE IS NOT INDICATED, USE WALL TYPE CONSISTENT WITH SIMILAR CONDITIONS.



**kumin associates, inc.**  
 architects • interior designers  
 808 E street, suite 200 • anchorage, alaska 99501 • (907) 272-8833

# ELEMENTARY SCHOOL UNALASKA, ALASKA

drawn	SAI
checked	DB
date	05-10-99
revisions	
job no.	141203
dwg. title	FLOOR PLAN
sheet no.	<b>A2.1</b>

418\CD\A2.1.dwg Mon May 17 11:46:32 1999 Station #60

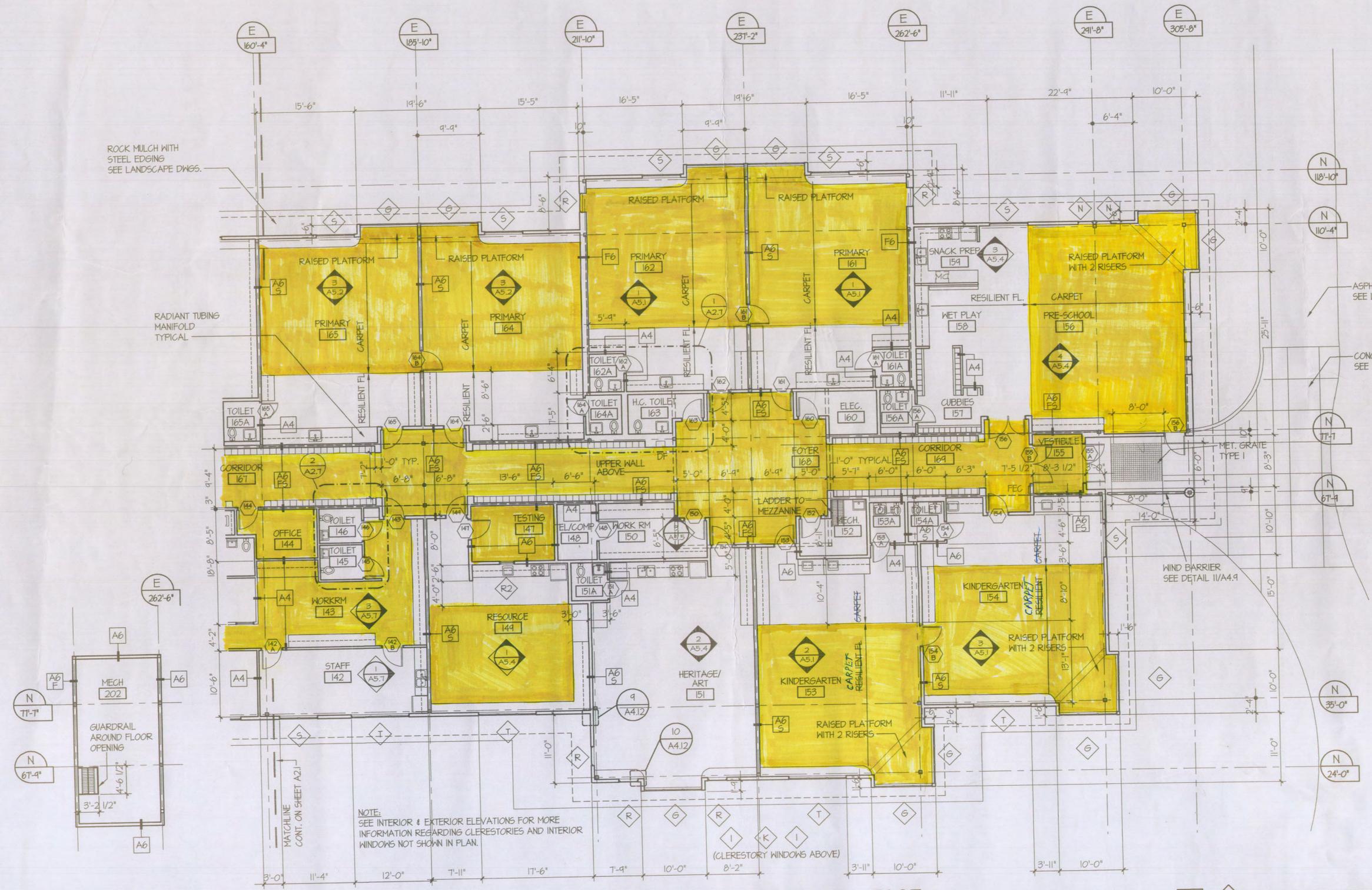
Attachment A  
Scope of Work showing areas to be recarpeted



kumin associates, inc.  
architects • interior designers  
planners •  
608 E Street, Suite 200 • Anchorage, Alaska 99501 • (907) 272-8533

**ELEMENTARY SCHOOL**  
UNALASKA, ALASKA

drawn	SAJ
checked	DB
date	05-10-99
revisions	
job no.	9418203
dwg. title	FLOOR PLAN
sheet no.	<b>A2.2</b>



**2 MEZZANINE PLAN**  
1/8" = 1'-0"

**1 FLOOR PLAN - EAST**  
1/8" = 1'-0"



9418203.A2.2.dwg Mon May 17 10:58:12 1999 Station #50

## STANDARD FORM OF AGREEMENT BETWEEN THE OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2017, by and between the **UNALASKA CITY SCHOOL DISTRICT** (hereinafter called "OWNER") and \_\_\_\_\_ (hereinafter called "CONTRACTOR").

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

### Article 1. WORK

**CONTRACTOR** shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows:

The work will include, but not be limited to, furnishing all labor, tools, equipment, and materials and performing all operations in connection with the **EAGLE'S VIEW ELEMENTARY SCHOOL CARPET REPLACEMENT PROJECT**.

The work consists of the removal and disposal of existing floor coverings and the procurement and installation of new carpet and pad per the Scope of Work on Attachment A and specifications of this RFQ.

**Project Location:** Eagle's View Elementary School, 501 Broadway, Unalaska  
**Owner:** Unalaska City School District

The Contract Documents, which comprise the entire agreement between OWNER and CONTRACTOR concerning the WORK, consist of the following:

- Construction Drawings (Plan Sheets)
- Technical Specifications
- Agreement
- Invitation to Bid
- Instructions to Bidders
- Bid Forms
- Performance Bond
- Payment Bond
- General Conditions
- Addenda 1 through \_\_\_\_\_, inclusive.
- Change Orders which may be delivered or issued after the Effective Date of the Agreement and not attached hereto.

## **Article 2. CONTRACT TIME**

- 2.1 The CONTRACTOR is allowed **56 calendar days** from the date indicated in the Notice to Proceed for final completion of this project.
- 2.2 Liquidated Damages. The OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that the OWNER will suffer financial loss if the work is not completed within the times specified above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. These types of losses are difficult to quantify. They include, but are not limited to, [*increased expenses associated with management, maintaining service, conducting educational services, lost efficiency in the movement of employees and materials*] and general inconvenience to the public. They also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the OWNER if the work is not completed on time. Accordingly, instead of requiring any such proof, the OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay the OWNER Five Hundred Dollars (\$500.00) for each day that expires after the time specified above for completion and readiness for final payment.

## **Article 3. CONTRACT PRICE**

- 3.1 The OWNER shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents an amount equal to the sum of the Lump Sum prices for each separately identified and selected bid item (herein referred to as the "Contract Sum").
- 3.2 The Contract sum is based upon the Bid Items which are set forth in the Contract Documents and which are hereby accepted by the OWNER.

## **Article 4. PAYMENT PROCEDURES**

CONTRACTOR shall submit Applications for Payment in accordance with Article 13 of the General Conditions. Applications for Payment will be processed by the OWNER as provided in the General Conditions.

- 4.1 Progress Payments. The OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about a day of the month mutually agreeable to the OWNER and CONTRACTOR as agreed to at the preconstruction conference. All progress payments will be on the basis of the progress of the work measured by the actual installed quantity of items, plus allowances for stockpiled materials.
  - 4.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the

aggregate of payments previously made and less such amounts as the OWNER shall determine, or the OWNER may withhold, in accordance with Article 13 (paragraph 13.8) of the General Conditions.

- a. Ninety percent of work completed.
- b. Once 50 percent of the work is complete as determined by the OWNER, and if the character and progress of the work have been satisfactory to the OWNER, the OWNER, may determine that, as long as the character and progress of the work remain satisfactory to them, there will be no additional retainage on account of work completed; in which case, the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the work completed.

4.1.2 Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95 percent of the Contract Price, less such amounts as the OWNER shall determine, or the OWNER may withhold, in accordance with Article 13 of the General Conditions.

4.2 Final Payment. Upon final completion and acceptance of the work in accordance with the General Conditions; Affidavit of Payment of Debts and Claims; Affidavit of Release of Liens; and Receipt of Consent of Surety Company to Final Payment, the OWNER shall pay the remainder of the Contract Price as provided in said Article 13.

4.2.1 Deductions. The OWNER may deduct from the amount of any payment made to CONTRACTOR any sums owed to the OWNER by CONTRACTOR, including, but not limited to, past due sales tax, port and harbor fees, property tax, or rent. Before making any such deduction the OWNER shall have provided CONTRACTOR written notice of the amount claimed by OWNER to be due and owing from CONTRACTOR.

## **Article 5. INTEREST ON RETAINAGE**

All retainage shall bear interest at the rate required by AS 36.90.250, if applicable.

## **Article 6. CONTRACTOR'S REPRESENTATIONS**

In order to induce the OWNER to enter into this agreement, CONTRACTOR makes the following representations:

6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the work.

- 6.2 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies which pertain to the subsurface or physical conditions at or contiguous to the site or which otherwise may affect the cost, progress, performance, or furnishing of the work as CONTRACTOR considers necessary for the performance or furnishing of the work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by CONTRACTOR for such purposes.
- 6.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies, or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.4 of the General Conditions.
- 6.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
- 6.5 CONTRACTOR has given the OWNER written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by the OWNER is acceptable to CONTRACTOR.

#### **Article 7. MISCELLANEOUS**

- 7.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 7.2 The CONTRACTOR shall submit the Performance Bond, Labor and Material Payment Bonds, and Certification of Insurance and City of Unalaska business licenses and all Subcontractor City of Unalaska business licenses as required by the Contract Documents, prior to commencement of the Work. The Performance and Material Payment Bonds shall be in the amount of 100% of the contract bid price. **All Work shall be performed in accordance with the Laborers' and Mechanics' Minimum Rates of Pay as required by Title 36 AS 36.05 & AS 36.10 published by the Alaska Department of Labor.**

- 7.3 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 7.4 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

**IN WITNESS WHEREOF**, The OWNER and CONTRACTOR have signed all counterparts of this Agreement. All portions of the Contract Documents have been signed or identified by the OWNER and CONTRACTOR.

This Agreement will be effective on \_\_\_\_\_, 2017.

CONTRACTOR

UNALASKA CITY SCHOOL DISTRICT

By: \_\_\_\_\_  
 \_\_\_\_\_, Its \_\_\_\_\_

By: \_\_\_\_\_  
 John Conwell, Superintendent

State of Alaska )  
 ) ss.  
 Municipality of Unalaska )

State of Alaska )  
 ) ss.  
 Municipality of Unalaska )

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ Corporation, on behalf of the corporation.

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2017, by John Conwell, Superintendent of Schools, on behalf of the Unalaska City School District.

\_\_\_\_\_  
 Notary Public, State of Alaska  
 My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
 Notary Public, State of Alaska  
 My Commission Expires \_\_\_\_\_

**ARTICLE 1 - DEFINITIONS**

**ARTICLE 2 - AUTHORITIES AND LIMITATIONS**

- 2.1 Authorities and Limitations
- 2.2 Evaluations by Contracting Officer
- 2.3 Means and Methods
- 2.4 Visits to Site

**ARTICLE 3 - CONTRACT DOCUMENTS:  
INTENT, AMENDING, REUSE**

- 3.1 Incomplete Contract Documents
- 3.2 Copies of Contract Documents
- 3.3 Scope of Work
- 3.4 Intent of Contract Documents
- 3.5 Discrepancy in Contract Documents
- 3.6 Clarifications and Interpretations
- 3.7 Reuse of Documents

**ARTICLE 4 - LANDS AND PHYSICAL CONDI-  
TIONS**

- 4.1 Availability of Lands
- 4.2 Visit to Site
- 4.3 Explorations and Reports
- 4.4 Utilities
- 4.5 Damaged Utilities
- 4.6 Utilities Not Shown or Indicated
- 4.7 Survey Control

**ARTICLE 5 - BONDS AND INSURANCE  
AND INDEMNIFICATION**

- 5.1 Delivery of Bonds
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## **ACKNOWLEDGMENT**

The Unalaska City School District, "General Conditions" are based on the "Standard General Conditions of the Construction Contract" as published by the National Society of Professional Engineers (document number 1910-8, 1983 edition) on behalf of the Engineers Joint Construction Documents Committee. Portions of the NSPE General Conditions are reprinted herein by the express permission of NSPE to the State of Alaska, which supplied these General Conditions to the Unalaska City School District. Modifications to the NSPE text are made to provide for State laws, regulations, and established procedures.

The granting of permission by NSPE to allow the State of Alaska to reprint portions of the NSPE document 1910-8, 1983 does not constitute approval of the State of Alaska General Conditions or the subsequently developed Unalaska City School District General Conditions.

Insurance requirements were modified March, 2001.

## **ARTICLE 1 - DEFINITIONS**

Wherever used in the Contract Documents the following terms, or pronouns in place of them, are used, the intent and meaning, unless a different intent or meaning is clearly indicated, shall be interpreted as set forth below.

The titles and headings of the Sections, Subsections and Articles herein are intended for convenience of reference and shall not be considered as having bearing on their interpretation.

Whenever used in the Specifications or other Contract Documents the following terms have the meaning indicated which are applicable to both the singular and plural thereof. Working titles which have a masculine gender are intended to refer to persons of either sex.

Terms not defined below shall have their ordinary accepted meanings within the context in which they are used. "Webster's Third New International Dictionary of the English Language, Unabridged, Copyright 1961", or subsequent revision thereof; shall provide ordinarily accepted meanings. Words which have a well-known technical or trade meaning when used to describe work, materials or equipment shall be interpreted in accordance with such meaning. Words defined in Article 1 are capitalized throughout these General Conditions.

Addenda - All clarifications, corrections, or changes issued graphically or in writing by the UNALASKA CITY SCHOOL DISTRICT after the advertisement but prior to the opening of bids.

Advertisement - The public announcement, as required by law, inviting Bids for work to be performed or materials to be furnished.

Application for Payment - The form provided by the UNALASKA CITY SCHOOL DISTRICT which is used by the CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

Approved or Approval - Means written approval by Contracting Officer or his authorized representative as defined in Article 2.1.

A.S. - Initials which stand for Alaska Statute.

Award - The acceptance, by the Unalaska City School District, of the successful Bid.

Bid - The offer of a bidder, on the prescribed form to perform the work at the prices quoted.

Bid Bond - A type of bid Guarantee.

Bid Guaranty - The security furnished with a bid to guarantee that the bidder will enter into a contract if his proposal is accepted by the UNALASKA CITY SCHOOL DISTRICT.

Bidder - Any individual, firm, corporation or any acceptable combination thereof, or joint venture submitting a bid for the advertised Work.

Calendar Day - Every day shown on the calendar, beginning and ending at midnight.

Change Order - A written order by the UNALASKA CITY SCHOOL DISTRICT directing changes to the contract, within its general scope.

Unalaska City School District - The Unalaska City School District of Unalaska, Alaska. References to "owner" or "Contracting Agency" mean the Unalaska City School District.

Conditions of the Contract - Those portions of the Contract Documents which define the rights and responsibilities of the contracting parties and of others involved in the Work. The Conditions of the Contract include General Conditions, Supplementary Conditions and other Conditions.

Contract - The written agreement between the UNALASKA CITY SCHOOL DISTRICT and the CONTRACTOR setting forth the obligations of the parties and covering the Work to be performed, all as required by the Contract Documents.

Contract Documents - The Contract Form, Addenda, the Bidding Requirements and CONTRACTOR's Bid (including all appropriate bid tender forms), the Bonds, the Conditions of the Contract and all other Contract Requirements, the Specifications, and the Drawings furnished by the UNALASKA CITY SCHOOL DISTRICT to the CONTRACTOR, together with all change orders and documents approved by the Contracting Officer for inclusion, modifications and supplements issued on or after the Effective Date of the Contract.

Contracting Officer - The Contracting Officer shall be the Unalaska City School District Superintendent of Schools.

Contractor - The individual, firm, corporation or any acceptable combination thereof, contracting with the UNALASKA CITY SCHOOL DISTRICT for performance of the Work.

Contract Price - The total moneys payable by the UNALASKA CITY SCHOOL DISTRICT to the CONTRACTOR under the terms of the Contract Documents.

Contract Time - The number of Calendar Days or the date specified in the Construction Contract and authorized time extensions which identify how much time the CONTRACTOR is allowed to achieve Final Completion.

Consultant - A person, firm, agency or corporation retained by the UNALASKA CITY SCHOOL DISTRICT to prepare Contract Documents, perform construction administration services, or other Project related services.

Defective - An adjective which refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the UNALASKA CITY SCHOOL DISTRICT's approval of final payment.

Directive - A written communication to the CONTRACTOR from the Contracting Officer interpreting or enforcing a contract requirement or ordering commencement of an item of work.

Drawings - The drawings which show the character and scope of the Work to be performed and which have been furnished by the UNALASKA CITY SCHOOL DISTRICT or the UNALASKA CITY SCHOOL DISTRICT's Consultant and are by reference made a part of the Contract Documents.

Effective Date of the Contract - The date on which the Contract is fully executed by both CONTRACTOR and the UNALASKA CITY SCHOOL DISTRICT.

Final Completion - The Work (or specified part thereof) has progressed to the point that all Work is complete as determined by the Contracting Officer.

General Requirements - Sections of Division 1 of the Specifications which contain administrative and procedural requirements as well as requirements for temporary facilities which apply to Specification Divisions 2 through 16.

Holidays - The Unalaska City School District recognizes the following holidays:

1. New Year's Day - January 1
2. President's Day - Third Monday in February
3. Memorial Day - Last Monday in May
4. Independence Day - July 4
5. Labor Day - First Monday in September
6. Veteran's Day - November 11
7. Thanksgiving Day - Fourth Thursday in November
8. Christmas Day - December 25

If any holiday listed above falls on a Saturday, Saturday and the preceding Friday are both legal holidays. If the holiday should fall on a Sunday, Sunday and the following Monday are both legal holidays.

Install - Means to build into the Work, ready to be used in complete and operable condition and in compliance with Contract Documents.

Invitation for Bids or Invitation to Bid - A portion of the Bidding Documents soliciting bids for the Work to be performed.

Notice of Intent to Award - The written notice by the UNALASKA CITY SCHOOL DISTRICT to all Bidders identifying the apparent successful Bidder and establishing the UNALASKA CITY SCHOOL DISTRICT's intent to execute the Contract when all conditions required for execution of the Contract are met.

Notice to Proceed - A written notice to the CONTRACTOR to begin the Work and establishing the date on which the Contract Time begins.

Payment Bond - The security furnished by the CONTRACTOR and his surety to guarantee payment of the debts covered by the bond.

Performance Bond - The security furnished by the CONTRACTOR and his surety to guarantee performance and completion of the work in accordance with the contract.

Project - The total construction, of which the Work performed under the Contract Documents is the whole or a part, where such total construction may be performed by more than one prime contractor.

Project Manager - The authorized representative of the Contracting Officer who is responsible for administration of the Contract.

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

Proposal Guaranty - The security furnished with a proposal to guarantee that the bidder will enter into a contract if his proposal is accepted by the Department.

Regulatory Requirement - Laws, rules, regulations, ordinances, codes and/or orders of the United States, State of Alaska or City of Unalaska to the extent applicable to the Work.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the CONTRACTOR to illustrate material, equipment, fabrication, or erection for some portion of the Work.

Specification - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative and procedural details applicable thereto.

Subcontractor - An individual, firm, or corporation to whom the CONTRACTOR sublets part of the contract.

Substantial Completion - Although not fully completed, the Work (or a specified part thereof) has progressed to the point where, in the opinion of the UNALASKA CITY SCHOOL DISTRICT as evidenced by the UNALASKA CITY SCHOOL DISTRICT's written notice, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "Substantially Complete" and "Substantially Completed" as applied to any Work refer to Substantial Completion thereof.

Supplemental Agreement - A written agreement between the CONTRACTOR and the UNALASKA CITY SCHOOL DISTRICT covering work that is not within the general scope of the contract.

Surety - The corporation, partnership, or individual, other than the CONTRACTOR, executing a bond furnished by the CONTRACTOR.

Unit Price Work - Work to be paid for on the basis of unit prices.

Using Agency - The entity who will occupy or use the completed Work.

Work - Work is the act of, and the result of, performing services, furnishing labor, furnishing and incorporating materials and equipment into the Project and performing other duties and obligations, all as required by the Contract Documents. Such Work, however incremental, will culminate in the entire completed Project, or the various separately identifiable parts thereof.

## **ARTICLE 2 - AUTHORITIES AND LIMITATIONS**

### 2.1 Authorities and Limitations:

- 2.1.1 The Contracting Officer alone shall have the power to bind the UNALASKA CITY SCHOOL DISTRICT and to exercise the rights, responsibilities, authorities and functions vested in the Contracting Officer by the Contract Documents, except that the Contracting Officer shall have the right to designate in writing authorized representatives to act for him. Wherever any provision of the Contract Documents specifies an individual or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the UNALASKA CITY SCHOOL DISTRICT that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this Contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this Contract, vest in any such authorized representatives additional power and authority to act for the Contracting Officer or designate additional representatives, specifying the extent of their authority to act for the Contracting Officer; a copy of each document vesting additional authority in or removing that authority from an authorized representative or designating an additional authorized representative shall be furnished to the CONTRACTOR. The Unalaska City School District School Board reserves the right to appoint a new Contracting Officer without affecting any of the CONTRACTOR's obligations to the UNALASKA CITY SCHOOL DISTRICT under this Contract.
- 2.1.2 The CONTRACTOR shall perform the Work in accordance with any written order (including but not limited to instruction, direction, interpretation or determination) issued by an authorized representative in accordance with the authorized representative's authority to act for the Contracting Officer. The CONTRACTOR assumes all the risk and consequences of performing the Work in accordance with any order (including but not limited to instruction, direction, interpretation or determination) of anyone not authorized to issue such order, and of any order not in writing.
- 2.1.3 Should the Contracting Officer or his authorized representative designate Consultant(s) to act for the UNALASKA CITY SCHOOL DISTRICT as provided for in Paragraph 2.1.1, the performance or nonperformance of the Consultant under such authority to act, shall not give rise to any contractual obligation or duty of the Consultant to the CONTRACTOR, any Subcontractor, any Supplier, or any other organization performing any of the Work or any Surety representing them.
- 2.1.4 The term "Contracting Officer" when used in the text of these General Conditions or other Contract Documents following this section shall also mean any duly authorized representative of the Contracting Officer when authorized in accordance with Paragraph 2.1.1.

### 2.2 Evaluations by Contracting Officer:

2.2.1 The Contracting Officer will decide all questions which may arise as to;

- a. Quality and acceptability of materials furnished;
- b. Quality and acceptability of Work performed;
- c. Compliance with the Schedule of Progress;
- d. Interpretation of Contract Documents;
- e. Acceptable fulfillment of the Contract on the part of the CONTRACTOR.

2.2.2 In order to avoid cumbersome terms and confusing repetition of expressions in the Contract Documents whenever the terms "as ordered", "as directed", "as required", "as approved", or terms of like effect or import

are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used it shall be understood as if the expression were followed by the words "the Contracting Officer". When such terms are used to describe a requirement, direction, review or judgment of the Contracting Officer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise).

- 2.2.3 The use of any such term or adjective shall not be effective to assign to the UNALASKA CITY SCHOOL DISTRICT any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provision of paragraphs 2.3 or 2.4.

2.3 Means & Methods:

The means, methods, techniques, sequences or procedures of construction, or safety precautions and the program incident thereto, and the failure to perform or furnish the Work in accordance with the Contract Documents are the sole responsibility of the CONTRACTOR.

2.4 Visits to Site:

The Contracting Officer will make visits to the site and approved remote storage sites at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Such observations or the lack of such observations shall in no way relieve the CONTRACTOR from his duty to perform the Work in accordance with the Contract Documents.

**ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

3.1 Incomplete Contract Documents:

The submission of a Bid by the Bidder is considered a representation that the Bidder examined the Contract Documents to make certain that all sheets and pages were provided and that the Bidder is satisfied as to the conditions to be encountered in performing the Work. The UNALASKA CITY SCHOOL DISTRICT expressly denies any responsibility or liability for a Bid submitted on the basis of an incomplete set of Contract Documents.

3.2 Copies of Contract Documents:

The UNALASKA CITY SCHOOL DISTRICT shall furnish to the CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished, upon request, at the cost of reproduction.

3.3 Scope of Work:

The Contract Documents comprise the entire Contract between the UNALASKA CITY SCHOOL DISTRICT and the CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the Regulatory Requirements.

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

3.4 Intent of Contract Documents:

- 3.4.1 It is the intent of the Contract Documents to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied, without any adjustment in Contract Price or Contract Time, whether or not specifically called for.

- 3.4.2 Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Regulatory Requirements, whether such reference be specific or by implication, shall mean the edition

stated in the Contract Documents or if not stated the latest standard specification, manual, code or Regulatory Requirements in effect at the time of Advertisement for the Project (or, in the Effective Date of the Contract if there was no Advertisement). However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the UNALASKA CITY SCHOOL DISTRICT and the CONTRACTOR, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the UNALASKA CITY SCHOOL DISTRICT or any of the UNALASKA CITY SCHOOL DISTRICT's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 2.3 or 2.4.

3.5 Discrepancy in Contract Documents:

3.5.1 Before undertaking the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures, and dimensions shown thereon and all applicable field measurements. Work in the area by the CONTRACTOR shall imply verification of figures, dimensions and field measurements. If, during the above study or during the performance of the Work, the CONTRACTOR finds a conflict, error, discrepancy or omission in the Contract Document, or a discrepancy between the Contract Documents and any standard specification, manual, code, or Regulatory Requirement which affects the Work, The CONTRACTOR shall promptly report such discrepancy in writing to the Contracting Officer. The CONTRACTOR shall obtain a written interpretation or clarification from the Contracting Officer before proceeding with any Work affected thereby. Any adjustment made by the CONTRACTOR without this determination shall be at his own risk and expense. However, the CONTRACTOR shall not be liable to the UNALASKA CITY SCHOOL DISTRICT for failure to report any conflict, error or discrepancy in the Contract Documents unless the CONTRACTOR had actual knowledge thereof or should reasonably have knowledge thereof.

3.5.2 Discrepancy - Order of Precedence:

When conflicts, errors, or discrepancies within the Contract Documents exist, the order of precedence from most governing to least governing will be as follows:

Supplementary Conditions

General Conditions

General Requirements

Technical Specifications

Drawings (recorded dimensions will govern over scaled dimensions, large details over small scale, schedules over plans, architectural drawings over structural drawings over mechanical and electrical drawings)

3.6 Clarifications and Interpretations:

The Contracting Officer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as the Contracting Officer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

3.7 Reuse of Documents:

Neither the CONTRACTOR nor any Subcontractor, or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the UNALASKA CITY SCHOOL DISTRICT shall have or acquire any title to or ownership rights in any of the Contract Documents (or copies thereof) prepared by or for the UNALASKA CITY SCHOOL DISTRICT and they shall not reuse any of the Contract Documents on extensions of the Project or any other project without written consent of the Contracting Officer.

Contract Documents prepared by the CONTRACTOR in connection with the Work shall become the property of the UNALASKA CITY SCHOOL DISTRICT.

## **ARTICLE 4 - LANDS AND PHYSICAL CONDITIONS**

### 4.1 Availability of Lands:

The UNALASKA CITY SCHOOL DISTRICT shall furnish as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for use of the CONTRACTOR in connection with the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the UNALASKA CITY SCHOOL DISTRICT, unless otherwise provided in the Contract Documents. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### 4.2 Visit to Site:

The submission of a Bid by the CONTRACTOR is considered a representation that the CONTRACTOR has visited and carefully examined the site and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract Documents.

### 4.3 Explorations and Reports:

The Supplementary Conditions identify reports of explorations and tests of subsurface conditions at the site that have been utilized by the UNALASKA CITY SCHOOL DISTRICT in preparation of the Contract Documents. The CONTRACTOR may rely upon the accuracy of the factual data contained in such reports, but not upon interpretations or opinions drawn from such factual data contained therein or for the completeness or sufficiency thereof. Except as indicated in the immediately preceding sentence and in paragraphs 4.4 and 9.9, CONTRACTOR shall have full responsibility with respect to surface and subsurface conditions at the site.

### 4.4 Utilities:

4.4.1 The horizontal and vertical locations of known underground utilities as shown or indicated by the Contract Documents are approximate and are based on information and data furnished to the UNALASKA CITY SCHOOL DISTRICT by the owners of such underground utilities.

4.4.2 The CONTRACTOR shall have full responsibility for:

- a. Reviewing and checking all information and data concerning utilities.
- b. Locating all underground utilities shown or indicated in the Contract Documents which are affected by the Work.
- c. Coordination of the Work with the owners of all utilities during construction.
- d. Safety and protection of all utilities as provided in paragraph 6.17.
- e. Repair of any damage to utilities resulting from the Work in accordance with 4.4.4 and 4.5.

4.4.3 If Work is to be performed by any utility owner, the CONTRACTOR shall cooperate with such owners to facilitate the Work.

4.4.4 In the event of interruption to any utility service as a result of accidental breakage or as a result of being exposed or unsupported, the CONTRACTOR shall promptly notify the utility owner and the Contracting Officer. If service is interrupted repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

### 4.5 Damaged Utilities:

When utilities are damaged by the CONTRACTOR, the utility owner shall have the choice of repairing the utility or having the CONTRACTOR repair the utility. In the following circumstances, the CONTRACTOR shall reimburse the

utility owner for repair costs or provide at no cost to the utility owner or the UNALASKA CITY SCHOOL DISTRICT, all materials, equipment and labor necessary to complete repair of the damage:

- a. When the utility is shown or indicated in the Contract Documents.
- b. When the utility has been located by the utility owner.
- c. When no locate was requested by the CONTRACTOR for utilities shown or indicated in the Contract Documents.
- d. All visible utilities.
- e. When the CONTRACTOR could have, otherwise, reasonably been expected to be aware of such utility.

#### 4.6 Utilities Not Shown or indicated.

If, while directly performing the Work, an underground utility is uncovered or revealed at the site which was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.19) identify the owner of such underground facility and give written notice thereof to that owner and to the Contracting Officer. The Contracting Officer will promptly review the underground utility to determine the extent to which the Contract Documents and the Work should be modified to reflect the impacts of the discovered utility. The Contract Documents will be amended or supplemented to the extent necessary through the issuance of a change document by the Contracting Officer. During such time, the CONTRACTOR shall be responsible for the safety and protection of such underground utility as provided in paragraph 6.17. The CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are directly attributable to the existence of any underground utility that was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of.

#### 4.7 Survey Control:

The UNALASKA CITY SCHOOL DISTRICT will identify sufficient horizontal and vertical control data to enable the CONTRACTOR to survey and layout the Work. All survey work shall be performed under the direct supervision of a registered Land Surveyor when required by paragraph 7.8.

### **ARTICLE 5 - BONDS, INSURANCE, AND INDEMNIFICATION**

#### 5.1 Delivery of Bonds:

When the CONTRACTOR delivers the executed Contract to the Contracting Officer, the CONTRACTOR shall also deliver to the Contracting Officer such bonds as the CONTRACTOR may be required to furnish in accordance with paragraph 5.2.

#### 5.2 Bonds:

The CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount as shown on the Contract as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These bonds shall remain in effect for one year after the date of Final Completion and until all obligations under this Contract, except special guarantees as per 12.7, have been met. All bonds shall be furnished on forms provided by the UNALASKA CITY SCHOOL DISTRICT (or copies thereof) and shall be executed by such Sureties as are authorized to do business in the State of Alaska. The contracting Officer may at his option copy the Surety with notice of any potential default or liability.

#### 5.3 Replacement of Bond and Surety:

If the Surety on any bond furnished in connection with this Contract is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.2, or otherwise becomes unacceptable to the UNALASKA CITY SCHOOL DISTRICT, or if any such Surety

fails to furnish reports as to his financial condition as requested by the UNALASKA CITY SCHOOL DISTRICT, the CONTRACTOR shall within five days thereafter substitute another bond and Surety, both of which must be acceptable to UNALASKA CITY SCHOOL DISTRICT.

#### 5.4 Insurance Requirements:

- 5.4.1. The contractor shall carry and maintain throughout the life of this contract, at its own expense, insurance not less than the amounts and coverage herein specified, and the Unalaska City School District, its employees and agents shall be named as additional insured under the insurance coverage so specified and where allowed, with respect to the performance of the work. There shall be no right of subrogation against the Unalaska City School District or its agents performing work in connection with the work, and this **waiver of subrogation** shall be endorsed upon the policies. Insurance shall be placed with companies acceptable to the Unalaska City School District; and these policies providing coverage thereunder shall contain provisions that no cancellation or material changes in the policy relative to this project shall become effective except upon **30 days** prior written notice thereof to the Unalaska City School District.
- 5.4.2. Prior to commencement of the work, the contractor shall furnish certificates to the Unalaska City School District, in duplicate, evidencing that the Insurance policy provisions required hereunder are in force. Acceptance by the Unalaska City School District of deficient evidence does not constitute a waiver of contract requirements.
- 5.4.3. The contractor shall furnish the Unalaska City School District with certified copies of policies upon request. The minimum coverages and limits required are as follows:
  1. **Workers' Compensation** insurance in accordance with the statutory coverages required by the State of Alaska and **Employers Liability** insurance with limits not less than **\$1,000,000** and, where applicable, insurance in compliance with any other statutory obligations, whether State or Federal, pertaining to the compensation of injured employees assigned to the work, including but not limited to Voluntary Compensation, Federal Longshoremen and Harbor Workers Act, Maritime and the Outer Continental Shelf's Land Act.
  2. **Commercial General Liability** with limits not less than **\$1,000,000** per Occurrence and **\$2,000,000** Aggregate for Bodily Injury and Property Damage, including coverage for Premises and Operations Liability, Products and Completed Operations Liability, Contractual Liability, Broad Form Property Damage Liability and Personal Injury Liability. Coverage shall not contain any exclusion of Explosion, Collapse, or Underground. Coverage is to be endorsed to include a per project aggregate. Additionally, such insurance shall be considered primary to any other insurance carried by the Unalaska City School District and the insurer will endorse the policy accordingly.
  3. **Commercial Automobile Liability** on all owned, non-owned, hired and rented vehicles with limits of liability of not less than **\$1,000,000** Combined Single Limit for Bodily Injury and Property Damage per each accident or loss.
  4. If applicable, Contractor's Equipment insurance covering all of the contractor's equipment and machinery to be used in connection with the performance of the work specified in this contract. This coverage requirement may be waived at the discretion of the Unalaska City School District if the Contractor self-insures the equipment and will waive all right of recovery against the Unalaska City School District in writing.
  5. **Umbrella/Excess Liability** insurance coverage of not less than **\$1,000,000** per occurrence and annual aggregate providing coverage in excess of General Liability, Auto Liability, and Employers Liability.
  6. If work involves use of aircraft, Aircraft Liability insurance covering all owned and non-owned aircraft with a per occurrence limit of not less than \$1,000,000.
  7. If work involves use of watercraft, Protection and Indemnity insurance with limits not less than \$1,000,000 per occurrence. Hull and Machinery coverage is to be carried on the vessel for the full current market value. This coverage requirement may be waived at the discretion of the Unalaska City School District if

the contractor self-insures the equipment and will waive all rights of recovery against the Unalaska City School District in writing.

8. Where applicable, Professional Liability insurance with limits of not less than \$1,000,000 per claim and \$1,000,000 aggregate, subject to a maximum deductible of \$10,000 per claim. The Unalaska City School District has the right to negotiate increase of deductibles subject to acceptable financial information of the policyholder.
9. Where applicable, Pollution Liability insurance with a project limit of not less than \$1,000,000 subject to a maximum deductible of \$10,000 to include coverage for Asbestos, Hazardous Materials, Lead or other related environmental hazards. The Unalaska City School District has the right to negotiate increase of deductibles subject to acceptable financial information of the policyholder.

In the event Asbestos, Hazardous Materials, Lead or other related environmental hazards are transported by vehicle and/or marine vessel, the operator of such vehicles and vessels shall provide a Certificate of Insurance for the transportation of such materials (including loading and unloading) with limits of not less than \$1,000,000.

10. **Builder's Risk Insurance:** Coverage shall be provided on an "All Risk" completed value basis and protect the interests of the Unalaska City School District, the contractor and his subcontractors. Coverage shall include all materials, equipment and supplies that are intended for specific installation in the project while such materials, supplies and equipment are located at the project site and in transit from port of arrival to job site and while temporarily located away from the project site.

- 5.4.4. Any deductibles or self-insured retentions must be declared to and approved by the Unalaska City School District. At the option of the Unalaska City School District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Unalaska City School District, its officers, officials, employees and volunteers; or the contractor shall provide a financial guarantee satisfactory to the Unalaska City School District guaranteeing payment of losses and related investigations, claim administration and defense expense.
- 5.4.5. All insurance policies as described above are required to be written on an "occurrence" basis. In the event occurrence coverage is not available, the contractor agrees to maintain "claims made" coverage for a minimum of two years after project completion.
- 5.4.6. If the contractor employs second tier subcontractors to perform any work hereunder, the contractor agrees to require such subcontractors to obtain, carry, maintain, and keep in force during the time in which they are engaged in performing any work hereunder, policies of insurance which comply with the requirements as set forth in this section. This requirement is applicable to subcontractors of any tier.
- 5.4.7. The contractor is required to maintain all certificates of insurance during the course of the project and for a minimum of three (3) years following the completion of such project. It is further agreed, that upon request by the Unalaska City School District, the Contractor will provide copies of any and all subcontractor certificates of insurance for review of compliance.
- 5.4.8. Failure by the Contractor to maintain the required insurance coverage or to comply with the above, may, at the option of the Unalaska City School District, be deemed Defective Work and remedied in accordance with the contract.

## 5.5 Indemnification:

- 5.5.1 The CONTRACTOR and his Subcontractors will name the owner as "Additional Insured" and will provide a "Waiver of Subrogation".
- 5.5.2 The CONTRACTOR shall indemnify, save harmless, and defend the UNALASKA CITY SCHOOL DISTRICT and its agents and its employees from any and all claims or actions for injuries or damages sustained by any person or property arising directly or indirectly from the construction of the CONTRACTOR's performance of this contract; however, this provision has no effect if, but only if, the

sole proximate cause of the injury or damage is the negligence of the Unalaska City School District or its agents.

## **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

### 6.1 Supervision of Work:

The CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. All Work under this Contract shall be performed in a skillful and workmanlike manner. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

### 6.2 Superintendence by CONTRACTOR:

The CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent. The Contracting Officer shall be advised in writing of the superintendent's name, local address, and telephone number. This written advice is to be kept current until Final Acceptance by the UNALASKA CITY SCHOOL DISTRICT. The superintendent will be the CONTRACTOR's representative at the site and shall have full authority to act and sign documents on behalf of the CONTRACTOR.

All communications given to the superintendent shall be as binding as if given to the CONTRACTOR. The CONTRACTOR shall cooperate with the Contracting Officer in every way possible.

### 6.3 Character of Workers:

The CONTRACTOR shall provide a sufficient number of competent, suitable qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The CONTRACTOR shall at all times maintain good discipline and order at the site. The Contracting Officer may, in writing, require the CONTRACTOR to remove from the Work any employee the Contracting Officer deems incompetent, careless, or otherwise detrimental to the progress of the Work, but the Contracting Officer shall have no duty to exercise this right.

### 6.4 CONTRACTOR to Furnish:

Unless otherwise specified in the General Requirements, the CONTRACTOR shall furnish and assume full responsibility for all materials, equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

### 6.5 Materials and Equipment:

All materials and equipment shall be of specified quality and new, except as otherwise provided in the Contract Documents. If required by the Contracting Officer, the CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the UNALASKA CITY SCHOOL DISTRICT or any of the UNALASKA CITY SCHOOL DISTRICT's Consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 2.3 or 2.4.

### 6.6 Anticipated Schedules:

6.6.1 Within reasonable time prior to the preconstruction conference the CONTRACTOR shall submit to the Contracting Officer for review an anticipated progress schedule indicating the starting and completion dates of the various stages of the Work.

6.6.2 Within fifteen days after the date of the Notice to Proceed, the CONTRACTOR shall submit to the Contracting Officer for review:

Anticipated schedule of Shop Drawing submissions; and Anticipated Schedule of Values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by the CONTRACTOR at the time of submission.

#### 6.7 Finalizing Schedules:

Prior to processing the first Application for Payment the Contracting Officer and the CONTRACTOR will finalize schedules required by paragraph 6.6.

Acceptance by the UNALASKA CITY SCHOOL DISTRICT of the progress schedule will neither impose on the UNALASKA CITY SCHOOL DISTRICT nor relieve the CONTRACTOR from full responsibility for the progress or scheduling of the Work. If accepted, the finalized schedule of Shop Drawing and other required submissions will be acceptable to the UNALASKA CITY SCHOOL DISTRICT as providing a workable arrangement for processing the submissions. If accepted the finalized Schedule of Values will be acceptable to the UNALASKA CITY SCHOOL DISTRICT as an approximation of anticipated value of Work accomplished over the anticipated Contract Time. Receipt and acceptance of a schedule submitted by the CONTRACTOR shall not be construed to assign responsibility for performance or contingencies to the UNALASKA CITY SCHOOL DISTRICT or relieve the CONTRACTOR of his responsibility to adjust his forces, equipment, and work schedules as may be necessary to insure completion of the Work within prescribed Contract Time. Should the progress of the Work be discontinued for any reason, the CONTRACTOR shall notify the Contracting Officer at least 24 hours in advance of resuming operations.

#### 6.8 Adjusting Schedules:

Upon substantial changes to the schedule or upon request, the CONTRACTOR shall submit to the Contracting Officer for acceptance (to the extent indicated in paragraph 6.7 and the General Requirements) adjustments in the schedules to reflect the actual present and anticipated progress of the Work.

#### 6.9 Substitutes or "Or-Equal" Items:

- 6.9.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the Contracting Officer only if sufficient information is submitted by the CONTRACTOR which clearly demonstrates to the Contracting Officer that the material or equipment proposed is equivalent or equal in all aspects to that named. The procedure for review by the Contracting Officer will include the following as supplemented in the General Requirements.
- 6.9.2 Requests for review of substitute items of material and equipment will not be accepted by the Contracting Officer from anyone other than the CONTRACTOR.
- 6.9.3 If the CONTRACTOR wishes to furnish or use a substitute item of material or equipment, the CONTRACTOR shall make written application to the Contracting Officer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not delay the CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the UNALASKA CITY SCHOOL DISTRICT for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty.
- 6.9.4 All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by

the Contracting Officer in evaluating the proposed substitute. The Contracting Officer may require the CONTRACTOR to furnish at the CONTRACTOR's expense additional data about the proposed substitute. The Contracting Officer may reject any substitution request which the Contracting Officer determines is not in the best interest of the UNALASKA CITY SCHOOL DISTRICT.

6.10 Substitute Means and Methods:

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Contracting Officer, if the CONTRACTOR submits sufficient information to allow the Contracting Officer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the Contracting Officer will be similar to that provided in paragraph 6.9 as applied by the Contracting Officer and as may be supplemented in the General Requirements.

6.11 Evaluation of Substitution:

The Contracting Officer will be allowed a reasonable time within which to evaluate each proposed substitute. The Contracting Officer will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Contracting Officer's prior written acceptance which will be evidenced by either a Change Order or a Shop Drawing approved in accordance with Sections 6.20 and 6.21. The Contracting Officer may require the CONTRACTOR to furnish at the CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

6.12 Dividing the Work:

The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.13 Subcontractors:

The CONTRACTOR may utilize the services of licensed specialty Subcontractors on those parts of the Work which, under normal contracting practices, are performed by licensed specialty Subcontractors, in accordance with the following conditions:

- 6.13.1 The CONTRACTOR shall not award any Work to any Subcontractor without prior written approval of the Contracting Officer. This approval will not be given until the CONTRACTOR submits to the Contracting Officer a written statement concerning the proposed award to the Subcontractor which shall contain required E.E.O. documents, evidence of insurance, and a copy of the proposed subcontract executed by the subcontractor. No acceptance by the Contracting Officer of any such Subcontractor shall constitute a waiver of any right of the UNALASKA CITY SCHOOL DISTRICT to reject Defective Work.
- 6.13.2 The CONTRACTOR shall be fully responsible to the UNALASKA CITY SCHOOL DISTRICT for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions.
- 6.13.3 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate written agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the UNALASKA CITY SCHOOL DISTRICT and contains waiver provisions as required by paragraph 13.17 and termination provisions as required by Article 14.
- 6.13.4 Nothing in the Contract Documents shall create any contractual relationship between the UNALASKA CITY SCHOOL DISTRICT and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the UNALASKA CITY SCHOOL DISTRICT to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Regulatory Requirements. The UNALASKA CITY SCHOOL DISTRICT will not undertake to settle any differences between or among the CONTRACTOR, Subcontractors, or Suppliers.

6.13.5 The CONTRACTOR and Subcontractors shall coordinate their work and facilitate general progress of Work. Each trade shall afford other trades every reasonable opportunity for installation of their work and storage of materials. If cooperative work of one trade must be altered due to lack of proper supervision, or failure to make proper provisions in time by another trade, such conditions shall be remedied by the CONTRACTOR with no change in Contract Price or Contract Time.

6.13.6 The CONTRACTOR shall include on his own payrolls any person or persons working on the contract who are not covered by written subcontract, and shall ensure that all Subcontractors include on their payrolls all persons performing work under the direction of the Subcontractor.

6.14 Use of Premises:

The CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project limits and approved remote storage sites and lands and areas identified in and permitted by Regulatory Requirements, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the UNALASKA CITY SCHOOL DISTRICT by any such owner or occupant because of the performance of the Work, the CONTRACTOR shall hold the UNALASKA CITY SCHOOL DISTRICT and its agencies harmless.

6.15 Structural Loading:

The CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.16 Record Documents:

The CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Field Memos, Work Orders, Change Orders, Supplemental Agreements, and written interpretations and clarifications (issued pursuant to paragraph 3.6) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the Contracting Officer for reference and copying. Upon completion of the Work, the annotated record documents, samples and Shop Drawings will be delivered to the Contracting Officer. Record documents shall accurately record variations in the Work which vary from requirements shown or indicated in the Contract Documents.

6.17 Safety and Protection:

The CONTRACTOR alone shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.17.1 All employees on the Work and other persons and organizations who may be affected thereby;

6.17.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.17.3 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.

The CONTRACTOR shall comply with all applicable Regulatory Requirements of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or

furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the CONTRACTOR with no change in Contract Price or Contract Time except as stated in 4.6, except damage or loss attributable to unforeseeable causes beyond the control of and without the fault or negligence of the CONTRACTOR, including but not restricted to acts of God, or the public enemy or governmental authorities. The CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until Final Acceptance (except as otherwise expressly provided in connection with Substantial Completion).

6.18 Safety Representative:

The CONTRACTOR shall designate a responsible safety representative at the site. This person shall be the CONTRACTOR's superintendent unless otherwise designated in writing by the CONTRACTOR to the Contracting Officer.

6.19 Emergencies:

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the UNALASKA CITY SCHOOL DISTRICT, is obligated to act to prevent threatened damage, injury or loss. The CONTRACTOR shall give the Contracting Officer prompt written notice if the CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents is required because of the action taken in response to an emergency, a change will be authorized by one of the methods indicated in Paragraph 9.2, as determined appropriate by the Contracting Officer.

6.20 Shop Drawings and Samples:

- 6.20.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, the CONTRACTOR shall submit to the Contracting Officer for review and approval in accordance with the accepted schedule of Shop Drawing submissions the required number of all Shop Drawings, which will bear a stamp or specific written indication that the CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as the Contracting Officer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Contracting Officer to review the information as required.
- 6.20.2 The CONTRACTOR shall also submit to the Contracting Officer for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that the CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.
- 6.20.3 Before submission of each Shop Drawing or sample the CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.
- 6.20.4 At the time of each submission the CONTRACTOR shall give the Contracting Officer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the Contracting Officer for review and approval of each such variation. All variations of the proposed shop drawing from that specified will be identified in the submission and available maintenance, repair and replacement service will be indicated. The submittal will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such variation, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the UNALASKA CITY SCHOOL DISTRICT in evaluating the proposed variation. If the variation may result in a change of Contract Time or Price, or contract responsibility, and is not minor in nature; the CONTRACTOR must submit a written request for Change Order with the variation to notify the UNALASKA CITY SCHOOL DISTRICT of his intent. The UNALASKA CITY SCHOOL DISTRICT may require the CONTRACTOR to furnish at the CONTRACTOR's expense additional data about the proposed variation. The Contracting Officer may reject

any variation request which the Contracting Officer determines is not in the best interest of the UNALASKA CITY SCHOOL DISTRICT.

6.21 Shop Drawing and Sample Review:

- 6.21.1 The Contracting Officer will review with reasonable promptness Shop Drawings and samples, but the Contracting Officer's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate acceptance of the assembly in which the item functions. The CONTRACTOR shall make corrections required by the Contracting Officer and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. The CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by the Contracting Officer on previous submittals.
- 6.21.2 The Contracting Officer's review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless the CONTRACTOR has in writing advised the Contracting Officer of each such variation at the time of submission as required by paragraph 6.20.4. The Contracting Officer if he so determines, may give written approval of each such variation by Change Order, except that, if the variation is minor and no Change Order has been requested a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review comments shall suffice as a modification. No approval by the Contracting Officer will relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.20.3.
- 6.21.3 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to the Contracting Officer's review of the pertinent submission will be the sole expense and responsibility of the CONTRACTOR.

6.22 Maintenance During Construction:

The CONTRACTOR shall maintain the Work during construction and until Substantial Completion, at which time the responsibility for maintenance shall be established in accordance with paragraph 13.10.

6.23 Continuing the Work:

The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the UNALASKA CITY SCHOOL DISTRICT. No work shall be delayed or postponed pending resolution of any disputes, disagreements, or claims except as the CONTRACTOR and the Contracting Officer may otherwise agree in writing.

6.24 Consent to Assignment:

The CONTRACTOR shall obtain the prior written consent of the Contracting Officer to any proposed assignment of any interest in, or part of this Contract. The consent to any assignment or transfer shall not operate to relieve the CONTRACTOR or his Sureties of any of his or its obligations under this Contract or the Performance Bonds. Nothing herein contained shall be construed to hinder, prevent, or affect an assignment of monies due, or to become due hereunder, made for the benefit of the CONTRACTOR's creditors pursuant to law.

6.25 Use of Explosives:

- 6.25.1 When the use of explosives is necessary for the prosecution of the Work, the CONTRACTOR shall exercise the utmost care not to endanger life or property, including new Work and shall follow all Regulatory Requirements applicable to the use of explosives. The CONTRACTOR shall be responsible for all damage resulting from the use of explosives.

- 6.25.2 All explosives shall be stored in a secure manner in compliance with all Regulatory Requirements, and all such storage places shall be clearly marked. Where no Regulatory Requirements apply, safe storage shall be provided not closer than 1,000 feet from any building, camping area, or place of human occupancy.
- 6.25.3 The CONTRACTOR shall notify each public utility owner having structures in proximity to the site of his intention to use explosives. Such notice shall be given sufficiently in advance to enable utility owners to take such steps as they may deem necessary to protect their property from injury. However, the CONTRACTOR shall be responsible for all damage resulting from the use of the explosives, whether or not, utility owners act to protect their property.
- 6.26 CONTRACTOR's Records:
  - 6.26.1 Records of CONTRACTOR and Subcontractors relating to personnel, payrolls, invoices of materials, and any and all other data relevant to the performance of the Contract, must be kept on a generally recognized accounting system. Such records must be available during normal work hours to the Contracting Officer for purposes of investigation to ascertain compliance with Regulatory Requirements and provision of the Contract Documents.
  - 6.26.2 Payroll records must contain the name and address of each employee, his correct classification, rate of pay, daily and weekly number of hours of work, deductions made, and actual wages paid. The CONTRACTOR and Subcontractors shall make employment records available for inspection by the Contracting Officer and representatives of the U.S. and/or State Department of Labor and will permit such representatives to interview employees during working hours on the Project.
  - 6.26.3 Records of all communications between the UNALASKA CITY SCHOOL DISTRICT and the CONTRACTOR and other parties, where such communications affected performance of this Contract, must be kept by the CONTRACTOR and maintained for a period of three years from Final Acceptance. The UNALASKA CITY SCHOOL DISTRICT or its assigned representative may perform an audit of these records during normal work hours after written notice to the CONTRACTOR.

## **ARTICLE 7 - LAWS AND REGULATIONS**

### 7.1 Laws to be Observed:

The CONTRACTOR shall keep fully informed of all Federal and State Regulatory Requirements and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The CONTRACTOR shall at all times observe and comply with all such Regulatory Requirements, orders and decrees; and shall protect and indemnify the UNALASKA CITY SCHOOL DISTRICT and its representatives against claim or liability arising from or based on the violation of any such Regulatory Requirement, order, or decree whether by the CONTRACTOR, Subcontractor, or any employee of either. Except where otherwise expressly required by applicable Regulatory Requirements, the UNALASKA CITY SCHOOL DISTRICT shall not be responsible for monitoring CONTRACTOR's compliance with any Regulatory Requirements.

### 7.2 Permits, Licenses, and Taxes:

- 7.2.1 The CONTRACTOR shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work. As a condition of performance of this Contract, the CONTRACTOR shall pay all Federal, State and local taxes incurred by the CONTRACTOR, in the performance of the Contract. Proof of payment of these taxes is a condition precedent to final payment by the UNALASKA CITY SCHOOL DISTRICT under this Contract.
- 7.2.2 The CONTRACTOR's certification that taxes have been paid (as contained in the Release of Contract) will be verified with the Department of Revenue and Department of Labor, prior to final payment.
- 7.2.3 If any Federal, State or local tax is imposed, charged, or repealed after the date of Bid opening and is made applicable to and paid by the CONTRACTOR on the articles or supplies herein contracted for, then the Contract shall be increased or decreased accordingly by a Change Order.

### 7.3 Patented Devices, Materials and Processes:

If the CONTRACTOR employs any design, device, material, or process covered by letters of patent, trademark or copyright, the CONTRACTOR shall provide for such use by suitable legal agreement with the patentee or owner. The CONTRACTOR and the Surety shall indemnify and save harmless the UNALASKA CITY SCHOOL DISTRICT and its agents, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the UNALASKA CITY SCHOOL DISTRICT for any costs, expenses, and damages which it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the Work.

### 7.4 Compliance of Specifications and Drawings:

If the CONTRACTOR observes that the Specifications and Drawings supplied by the UNALASKA CITY SCHOOL DISTRICT are at variance with any Regulatory Requirements, CONTRACTOR shall give the Contracting Officer prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 9.2. as determined appropriate by the Contracting Officer. If the CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Regulatory Requirements, and without such notice to the Contracting Officer, the CONTRACTOR shall bear all costs arising therefrom; however, it shall not be the CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings supplied by the UNALASKA CITY SCHOOL DISTRICT are in accordance with such Regulatory Requirements.

### 7.5 Accident Prevention:

The CONTRACTOR shall comply with AS 18.60.075 and all pertinent provisions of the Construction Code Occupational Safety and Health Standards issued by the Alaska Department of Labor.

### 7.6 Sanitary Provisions:

The CONTRACTOR shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees and UNALASKA CITY SCHOOL DISTRICT representatives as may be necessary to comply with the requirements of the State and local Boards of Health, or of other bodies or tribunals having jurisdiction.

### 7.7 Business Registration:

Comply with AS 08.18.011, as follows: "it is unlawful for a person to submit a bid or work as a contractor until he has been issued a certificate of registration by the Department of Commerce. A partnership or joint venture shall be considered registered if one of the general partners or ventures whose name appears in the name under which the partnership or venture does business is registered."

### 7.8 Professional Registration and Certification:

All craft trades, architects, engineers and land surveyors, electrical administrators, explosive handlers, and welders employed under the Contract shall specifically comply with applicable provisions of AS 08.18, 08.48, 08.40, 08.52, and 08.99. Provide copies of individual licenses within seven days following a request from the Contracting Officer.

### 7.9 Local Building Codes:

The CONTRACTOR shall comply with AS 35.10.025 which requires construction in accordance with applicable local building codes including the obtaining of required permits.

### 7.10 Air Quality Control:

The CONTRACTOR shall comply with all applicable provision of AS 46.03.04 as pertains to Air Pollution Control.

### 7.11 Archaeological or Paleontological Discoveries:

When the CONTRACTOR's operation encounters prehistoric artifacts, burials, remains of dwelling sites, or paleontological remains, such as shell heaps, land or sea mammal bones or tusks, the CONTRACTOR shall cease

operations immediately and notify the Contracting Officer. No artifacts or specimens shall be further disturbed or removed from the ground and no further operations shall be performed at the site until so directed. Should the Contracting Officer order suspension of the CONTRACTOR's operations in order to protect an archaeological or historical finding, or order the CONTRACTOR to perform extra work, such shall be covered by an appropriate Contract change document.

7.12 Alaska Forest Products:

Pursuant to AS 36.15.010, timber, lumber, and manufactured lumber products originating from local forests shall be used, whenever practicable or specified.

7.13 Preferential Employment:

The CONTRACTOR shall comply with AS 36.10, as amended, which provides for preferential employment of Alaska residents.

7.14 Wages and Hours of Labor:

7.14.1 One certified copy of all payrolls shall be submitted weekly to the State Department of Labor to assure compliance with AS 36.05.040, Filing Schedule of Employees Wages Paid and Other Information. The prime CONTRACTOR shall be responsible for the submission of certified copies of payrolls of all Subcontractors. The certification shall affirm that the payrolls are current and complete, that the wage rates contained therein are not less than the applicable rates referenced in these Contract Documents, and that the classification set forth for each laborer or mechanic conforms with the work he performed. The CONTRACTOR and his Subcontractors shall attend all hearings and conferences and produce such books, papers, and documents all as requested by the Department of Labor. Should Federal funds be involved, the Contracting Agency shall also receive a copy of the CONTRACTOR's certified payrolls.

7.14.2 The following Labor provisions shall also apply to this Contract:

- a. The CONTRACTOR and his Subcontractors shall pay all employees unconditionally and not less than once a week;
- b. Wages may not be less than those stated in the advertised specifications, regardless of the contractual relationship between the CONTRACTOR or Subcontractors and laborers, mechanics, or field surveyors;
- c. The scale of wages to be paid shall be posted by the CONTRACTOR in a prominent and easily accessible place at the site of the work;
- d. The UNALASKA CITY SCHOOL DISTRICT shall withhold so much of the accrued payments as is necessary to pay laborers, mechanics, or field surveyors employed by the CONTRACTOR or Subcontractors the difference between
  1. the rates of wages required by the contract to be paid laborers, mechanics, or field surveyors on the work, and
  2. the rates of wages in fact received by laborers, mechanics or field surveyors.

7.15 Overtime Work Hours and Compensation:

Pursuant to 40 U.S.C. 327-330 and AS 23.10.060, the CONTRACTOR shall not require nor permit any laborer or mechanic in any workweek in which he is employed on any work under this Contract to work in excess of eight hours in any Calendar Day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one half times his basic rate of pay for all such hours worked in excess of eight hours in any Calendar Day or in excess of forty hours in such workweek whichever is the greater number of overtime hours. In the event of any violation of this provision, the CONTRACTOR shall be liable to any affected employee for any amounts due and penalties and to the UNALASKA CITY SCHOOL DISTRICT for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of this provision in the sum of \$10.00 for each

Calendar Day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by this paragraph.

7.16 Covenant Against Contingent Fees:

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warrant, the UNALASKA CITY SCHOOL DISTRICT shall have the right to annul this Contract without liability or, in its discretion, to deduct price of consideration from the Contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

7.17 Officials Not to Benefit:

No member of or delegate to the U.S. Congress, the State Legislature, Unalaska City Council, Unalaska City School Board, Unalaska City School District or other State or District Officials shall be admitted to any share or part of this Contract, nor to any benefit that may arise there from. However, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefits.

7.18 Personal Liability of Public Officials:

In carrying out any of the provisions thereof, or in exercising any power or authority granted to the Contracting Officer by the Contract, there will be no liability upon the Unalaska City School District nor upon its agents or authorized as its representatives, either personally or as officials of the State of Alaska, it being always understood that in such matters they act as agents and representatives of the UNALASKA CITY SCHOOL DISTRICT.

**ARTICLE 8 - OTHER WORK**

8.1 Related Work at Site:

- 8.1.1 The UNALASKA CITY SCHOOL DISTRICT reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the Contract.
- 8.1.2 When separate contracts are let within the limits of the Project, the CONTRACTOR shall conduct his Work so as not to interfere with or hinder the work being performed by other contractors. The CONTRACTOR shall join his work with that of the others in an acceptable manner and shall perform it in proper sequence to that of others.
- 8.1.3 If the fact that other such work to be performed is identified or shown in the Contract Documents, the CONTRACTOR shall assume all liability, financial or otherwise, in connection with this Contract and indemnify and save harmless the Unalaska City School District of Unalaska and its agents from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the CONTRACTOR because of the presence and operations of other contractors.
- 8.1.4 If the fact that such other work to be performed was not identified or shown in the Contract Documents, written notice thereof will be given to the CONTRACTOR prior to starting any such other work. If the CONTRACTOR believes that such performance will require an increase in Contract Price or Contract Time, the CONTRACTOR shall notify the Contracting Officer of such required increase within fifteen (15) calendar days following receipt of the Contracting Officer's notice. Should the Contracting Officer find such increase(s) to be justified, a Change Order will be executed.

8.2 Access, Cutting, and Patching:

The CONTRACTOR shall afford each utility owner and any other contractor who is a party to such a direct contract with the UNALASKA CITY SCHOOL DISTRICT (or the UNALASKA CITY SCHOOL DISTRICT, if the UNALASKA CITY SCHOOL DISTRICT is performing the additional work with the UNALASKA CITY SCHOOL DISTRICT's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate the Work with the work of

others. The CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work, the CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter such other work with the written consent of the Contracting Officer. The duties and responsibilities of the CONTRACTOR under this paragraph are for the benefit of other contractors to the extent that there are comparable provisions for the benefit of the CONTRACTOR in said direct contracts between the UNALASKA CITY SCHOOL DISTRICT and other contractors.

#### 8.3 Defective Work by Others:

If any part of the CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor, utility owner, or the UNALASKA CITY SCHOOL DISTRICT, the CONTRACTOR shall inspect and promptly report to the Contracting Officer in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. The CONTRACTOR's failure to so report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in the other work.

#### 8.4 Coordination:

If the UNALASKA CITY SCHOOL DISTRICT contracts with others for the performance of other work at the site, Contracting Officer will have authority and responsibility for coordination of the activities among the various prime contractors.

### **ARTICLE 9 - CHANGES**

#### 9.1 UNALASKA CITY SCHOOL DISTRICT's Right to Change:

Without invalidating the Contract and without notice to any Surety, the UNALASKA CITY SCHOOL DISTRICT may, at any time or from time to time, order additions, deletions or revisions in the Work within the general scope of the Contract, including but not limited to changes:

- 9.1.1 In the Contract Documents;
- 9.1.2 In the method or manner of performance of the Work;
- 9.1.3 In Unalaska City School District-furnished facilities, equipment, materials, services, or site;
- 9.1.4 Directing acceleration in the performance of the Work.

#### 9.2 Authorization of Changes within the General Scope:

Additions, deletions, or revisions in the Work within the general scope of the Contract as specified in 9.1 shall be authorized by one or more of the following ways:

- 9.2.1 Directive (pursuant to paragraph 9.3)
- 9.2.2 A Change Order (pursuant to paragraph 9.5)
- 9.2.3 UNALASKA CITY SCHOOL DISTRICT's acceptance of Shop Drawing variations from the Contract Documents as specifically identified by the CONTRACTOR as required by paragraph 6.20.4.

#### 9.3 Directives:

- 9.3.1 The Contracting Officer shall provide written clarification or interpretation of the contract documents (pursuant to paragraph 3.6).
- 9.3.2 The Contracting Officer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents.

- 9.3.3 The Contracting Officer may order the Contractor to correct Defective Work or methods which are not in conformance with the Contract Documents.
- 9.3.4 The Contracting Officer may direct the commencement or suspension of Work or emergency related work (as provided in paragraph 6.19).
- 9.3.5 Upon the issuance of a Directive to the CONTRACTOR by the Contracting Officer, the CONTRACTOR shall immediately proceed with the performance of the work as prescribed by such Directive.
- 9.3.6 If the CONTRACTOR believes that the changes noted in a Directive may cause an increase in the Contract Price or an extension of Contract Time, the CONTRACTOR shall immediately provide written notice to the Contracting Officer depicting such increases before proceeding with the Directive, except in the case of an emergency. If the Contracting Officer finds the increase in Contract Price or the extension of Contract Time justified, a Change Order will be issued. If however, the Contracting Officer does not find that a Change Order is justified, the Contracting Officer may direct the CONTRACTOR to proceed with the work. The CONTRACTOR shall cooperate with the Contracting Officer in keeping complete daily records of the cost of such work. If a Change Order is ultimately determined to be justified, in the absence of agreed prices and unit prices, payment for such work will be made on a cost of the work basis as provided in 10.4.

9.4 Change Order:

A change in Contract Time, Contract Price, or responsibility may be made for changes within the scope of the Work only by Change Order. Upon receipt of an executed Change Order, the CONTRACTOR shall promptly proceed with the work involved which will be performed under the applicable conditions of the Contract Documents except as otherwise specifically provided. Changes in Contract Price and Contract Time shall be made in accordance with Article 10 and 11.

9.5 Shop Drawing Variations:

Variations by shop drawings shall only be eligible for consideration under 9.4 when the conditions affecting the price, time, or responsibility are identified by the CONTRACTOR in writing and a request for a Change Order is submitted as per 6.20.4.

9.6 Changes Outside the General Scope; Supplemental Agreement:

Any change which is outside the general scope of the Contract, as determined by the Contracting Officer, must be authorized by the appropriate representatives of the UNALASKA CITY SCHOOL DISTRICT and the CONTRACTOR.

9.7 Unauthorized Work:

The CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in this Article 9, except in the case of an emergency as provided in paragraph 6.19 and except in the case of uncovering Work as provided in paragraph 12.4.2.

9.8 Notification of Surety:

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents including, but not limited to, Contract Price or Contract Time is required by the provisions of any Bond to be given to a Surety, the giving of any such notice will be the CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

9.9 Differing Site Conditions:

- 9.9.1 The CONTRACTOR shall promptly, and before such conditions are disturbed (except in an emergency as permitted by paragraph 6.19), notify the Contracting Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, and which could not have been discovered by a careful examination of the site, or (2) unknown physical conditions at the site, or an unusual

nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Contracting Officer shall promptly investigate the conditions, and if the Contracting Officer finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or time required for, performance of this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly.

- 9.9.2 Any claim for additional compensation by the CONTRACTOR under this clause shall be made in accordance with Article 15 and shall not be allowed unless the CONTRACTOR has first given the notice required by this Contract. In the event that the Contracting Officer and the CONTRACTOR are unable to reach an agreement concerning an alleged differing site condition, the CONTRACTOR will be required to keep an accurate and detailed record which will indicate the actual cost of the work done under the alleged differing site condition. Failure to keep such a record shall be a bar to any recovery by reason of such alleged differing site conditions. The Contracting Officer shall be given the opportunity to supervise and check the keeping of such records.

## **ARTICLE 10 - CONTRACT PRICE; COMPUTATION AND CHANGE**

### 10.1 Contract Price:

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without change in the Contract Price. The Contract Price may only be changed by a Change Order or Supplemental Agreement.

### 10.2 Claim for Price Change:

Any claim for an increase or decrease in the Contract Price shall be submitted in accordance with the terms of Article 15, and shall not be allowed unless notice requirements of this Contract have been met.

### 10.3 Change Order Price Determination:

The value of any work covered by a Change Order for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- 10.3.1 Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 10.9.1
- 10.3.2 By mutual acceptance of a lump sum price which includes overhead and profit.
- 10.3.3 When 10.3.1 and 10.3.2 are inapplicable, on the basis of the Cost of the Work (determined as provided in paragraphs 10.4 and 10.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 10.6).

### 10.4 Cost of the Work:

The term Cost of the Work means the sum of all costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the work. Except as otherwise may be agreed to in writing by the UNALASKA CITY SCHOOL DISTRICT, such costs shall be in amount no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 10.5:

- 10.4.1 Payroll costs for employees in the direct employ of the CONTRACTOR in the performance of the work under schedules of job classifications agreed upon by the UNALASKA CITY SCHOOL DISTRICT and the CONTRACTOR. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by the UNALASKA CITY SCHOOL DISTRICT.

- 10.4.2 Cost of all materials and equipment furnished and incorporated in the work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to the CONTRACTOR unless the UNALASKA CITY SCHOOL DISTRICT deposits funds with the CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the UNALASKA CITY SCHOOL DISTRICT. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the UNALASKA CITY SCHOOL DISTRICT, and the CONTRACTOR shall make provisions so that they may be obtained.
- 10.4.3 Payments made by the CONTRACTOR to Subcontractors for work performed by Subcontractors. If required by the UNALASKA CITY SCHOOL DISTRICT, CONTRACTOR shall obtain competitive quotes from Subcontractors or Suppliers acceptable to the CONTRACTOR and shall deliver such quotes to the UNALASKA CITY SCHOOL DISTRICT who will then determine which quotes will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as the CONTRACTOR's Cost of Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 10.4.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed for services necessary for the completion of the work.
- 10.4.5 Supplemental costs including the following:
- a. The proportion of necessary transportation, travel and subsistence expenses of the CONTRACTOR's employees incurred in discharge of duties connected with the work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remain the property of the CONTRACTOR.
  - c. Rentals of all construction equipment and machinery and the parts thereof whether rented from the CONTRACTOR or others in accordance with rental agreements approved by the UNALASKA CITY SCHOOL DISTRICT and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the work.
  - d. Sales, consumer, use or similar taxes related to the work, and for which the CONTRACTOR is liable, imposed by Regulatory Requirements.
  - e. Deposits lost for causes other than negligence of the CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by the CONTRACTOR in connection with the performance and furnishing of the Work provided they have resulted from causes other than the negligence of the CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the UNALASKA CITY SCHOOL DISTRICT. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining the CONTRACTOR's Fee. If, however, any such loss or damage requires reconstruction and the CONTRACTOR is placed in charge thereof, the CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraphs 10.6.2.a and 10.6.2.b.
  - g. The cost of utilities, fuel and sanitary facilities at the site.
  - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the work.

- i. Cost of premiums for additional bonds and insurance required because of changes in the work and premiums for property insurance coverage within the limits of the deductible amounts established by the UNALASKA CITY SCHOOL DISTRICT in accordance with Article 5.

#### 10.5 Excluded Costs:

The term Cost of the Work shall not include any of the following:

- 10.5.1 Payroll costs and other compensation of CONTRACTOR's officer, executives, principles (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agency, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.4.1 or specifically covered by paragraph 10.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR's Fee.
- 10.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.
- 10.5.3 Any part of CONTRACTOR's capital expenses including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 10.5.4 Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 10.4.5.i above).
- 10.5.5 Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 10.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.4.

#### 10.6 CONTRACTOR's Fee:

The CONTRACTOR's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

- 10.6.1 A mutually acceptable fixed fee; or if none can be agreed upon.
- 10.6.2 A fee based on the following percentages of the various portions of the Cost of the Work:
  - a. For costs incurred under paragraphs 10.4.1 and 10.4.2, the CONTRACTOR's Fee shall be twenty percent;
  - b. For costs incurred under paragraph 10.4.3, the CONTRACTOR's Fee shall be fifteen percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all subcontractors shall be fifteen percent;
  - c. No fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;
  - d. The amount of credit to be allowed by the CONTRACTOR to the UNALASKA CITY SCHOOL DISTRICT for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's Fee by an amount equal to ten percent of the net decrease; and
  - e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR's Fee shall be computed on the basis of the net change in accordance with paragraphs 10.6.2.a through 10.6.2.d, inclusive.

#### 10.7 Cost Breakdown:

Whenever the cost of any work is to be determined pursuant to paragraphs 10.4 and 10.5, the CONTRACTOR will submit in form acceptable to the UNALASKA CITY SCHOOL DISTRICT an itemized cost breakdown together with supporting data.

#### 10.8 Cash Allowances:

It is understood the CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to the Contracting Officer. CONTRACTOR agrees that:

10.8.1 The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

10.8.2 CONTRACTOR's cost for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due the CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 10.9 Unit Price Work:

10.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR will be made by the UNALASKA CITY SCHOOL DISTRICT in accordance with paragraph 10.9.3.

10.9.2 Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR's overhead and profit for each separately identified item. If the "Basis of Payment" clause in the Contract Documents relating to any unit price in the bid schedule requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Contract Documents.

10.9.3 Payment to the CONTRACTOR shall be made only for the actual quantities of work performed and accepted or materials furnished, in conformance with the Contract Documents. When the accepted quantities of work or materials vary from the quantities stated in the bid schedule, or change documents, the CONTRACTOR shall accept as payment in full, payment at the stated unit prices for the accepted quantities of work and materials furnished, completed and accepted; except as provided below:

- a. When the quantity of work to be done or material to be furnished under any item, for which the total cost of the item exceeds 10% of the total Contract Price, is increased by more the 25 per cent of the quantity stated in the bid schedule, or change documents, either party to the Contract, upon demand, shall be entitled to an equitable unit price adjustment on the portion of the work above 125 per cent of the quantity stated in the bid schedule.
- b. When the quantity of work to be done or material to be furnished under any major item, for which the total cost of the item exceeds 10% of the total Contract Price, is decreased by more than 25 per cent of the quantity stated in the bid schedule, or change documents either party to the contract, upon demand, shall be entitled to an equitable price adjustment for the quantity of work performed or material furnished, limited to a total payment of not more the 75 per cent of the amount originally bid for the item.

#### 10.10 Determinations for Unit Prices:

The Contracting Officer will determine the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR. The Contracting Officer will review with the CONTRACTOR preliminary determinations on such matters before certifying the prices on the Bid Schedule. The Contracting Officer's certification thereon will be final and binding on the CONTRACTOR, unless, within ten days after the date of any such decisions, the CONTRACTOR delivers to the Contracting Officer written notice of intention to appeal from such a decision.

### **ARTICLE 11 - CONTRACT TIME; COMPUTATION AND CHANGE**

#### 11.1 Commencement of Contract Time; Notice to Proceed:

The Contract Time will commence to run on the day indicated in the Notice to Proceed.

#### 11.2 Starting the Work:

No work on contract items shall be performed before the effective date of the Notice to Proceed. The CONTRACTOR shall notify the Contracting Officer at least 24 hours in advance of the time actual construction operations will begin. The CONTRACTOR may request a limited Notice to Proceed after award has been made, to permit him to order long lead materials which could cause delays in project completion. However, granting is within the sole discretion of the Contracting Officer, and refusal or failure to grant a limited Notice to Proceed shall not be a basis for claiming for delay, extension of time, or alteration of price.

#### 11.3 Computation of Contract Time:

11.3.1 When the contract time is specified on a calendar days basis, all work under the contract shall be completed within the number of calendar days specified. The count of contract time begins on the day following receipt of the Notice to Proceed by the CONTRACTOR, if no starting day is stipulated therein. Calendar days shall continue to be counted against contract time until and including the date of Final Completion of the Work.

11.3.2 When the Contract completion time is specified as a fixed calendar date, it shall be the date of Final Completion.

#### 11.4 Time Change:

The Contract Time may only be changed by a Change Order or Supplemental Agreement.

#### 11.5 Extension Due to Delays:

The right of the CONTRACTOR to proceed shall not be terminated nor the CONTRACTOR charged with liquidated or actual damages because of any delays to the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to the following: acts of God or of the public enemy, acts of the UNALASKA CITY SCHOOL DISTRICT in contractual capacity, acts of another contractor in the performance of a contract with the UNALASKA CITY SCHOOL DISTRICT, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and delays of Subcontractors or Suppliers due to such causes. Any delay in receipt of materials on the site, caused by other than one of the specifically mentioned occurrences above, does not of itself justify a time extension. Provided, that the CONTRACTOR shall within twenty four (24) hours from the beginning of any such delay (unless the Contracting Officer shall grant a further period of the time prior to the date of final settlement of the Contract) notify the Contracting Officer in writing of the cause of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the Work when the findings of fact justify such an extension.

#### 11.6 Essence of Contract:

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

#### Reasonable Completion Time:

It is expressly understood and agreed by and between the CONTRACTOR and the UNALASKA CITY SCHOOL DISTRICT that the date of beginning and the time for Final Completion of the Work described herein are reasonable times for the completion of the Work.

#### 11.7 Delay Damages:

Whether or not the CONTRACTOR's right to proceed with the Work is terminated, he and his sureties shall be liable for damages resulting from his refusal or failure to complete the Work within the specified time. Liquidated damages for delay shall be paid by the CONTRACTOR or his Surety to the Unalaska City School District in the amount as specified in the Supplementary Conditions for each Calendar Day the completion of the Work or any part thereof is delayed beyond the Contract Time required by the Contract, or any extension thereof. If such amount of liquidated damages is not established by the Contract Documents, then the CONTRACTOR and his Surety shall be liable to the Unalaska City School District for any actual damages occasioned by such delay. The CONTRACTOR acknowledges that the liquidated damages established herein are not a penalty but rather constitute an estimate of damages that the Unalaska City School District will sustain by reason of delayed completion. These liquidated damages are intended as compensation for losses difficult to estimate. These damages will continue to run both before and after termination in the event of default termination. These liquidated damages do not cover excess costs of completion or the UNALASKA CITY SCHOOL DISTRICT's costs, fees, and charges related to reprocurement. If a default termination occurs, the Contractor or his Surety shall pay in addition to these damages, all excess costs and expenses related to completion as provided by Article 14.2.5.

### **ARTICLE 12 - QUALITY ASSURANCE**

#### 12.1 Warranty and Guaranty:

The CONTRACTOR warrants and guarantees to the UNALASKA CITY SCHOOL DISTRICT that all Work will be in accordance with the Contract Documents and will not be Defective. Prompt notice of all defects shall be given to the CONTRACTOR. All Defective Work, whether or not in place, may be rejected, corrected or accepted as provided for in this Article.

#### 12.2 Access to Work:

The UNALASKA CITY SCHOOL DISTRICT and the UNALASKA CITY SCHOOL DISTRICT's representatives, testing agencies and governmental agencies with jurisdiction interests will have access to the Work at reasonable times for their observation, inspecting and testing. The CONTRACTOR shall provide proper and safe conditions for such access.

#### 12.3 Tests and Inspections:

12.3.1 The CONTRACTOR shall give the Contracting Officer timely notice of readiness of the Work for all required inspections, tests or approvals.

12.3.2 If Regulatory Requirements of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, the CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish the Contracting Officer the required certificates of inspection, testing or approval. The CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with UNALASKA CITY SCHOOL DISTRICT's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to the CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by the CONTRACTOR. The UNALASKA CITY SCHOOL DISTRICT may perform additional tests and inspections which it deems necessary to insure quality control. All such failed tests or inspections shall be at the CONTRACTOR's expense.

12.3.3 If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of the Contracting Officer, it must, if requested by the Contracting Officer, be uncovered for observation. Such uncovering shall be at the CONTRACTOR's expense unless the CONTRACTOR has

given the Contracting Officer timely notice of CONTRACTOR's intention to cover the same and the Contracting Officer has not acted with reasonable promptness in response to such notice.

- 12.3.4 Neither observations nor inspections, test or approvals by the UNALASKA CITY SCHOOL DISTRICT of others shall relieve the CONTRACTOR from the CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

#### 12.4 Uncovering Work:

- 12.4.1 If any Work is covered contrary to the written request of the Contracting Officer, it must, if requested by the Contracting Officer, be uncovered for the contracting Officer's observation and replaced at the CONTRACTOR's expense.

- 12.4.2 If the Contracting Officer considers it necessary or advisable that covered Work be observed, inspected or tested, the CONTRACTOR, at the Contracting Officer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Contracting Officer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, the CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professional) and the UNALASKA CITY SCHOOL DISTRICT shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be Defective, the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

#### 12.5 UNALASKA CITY SCHOOL DISTRICT May Stop the Work:

If the Work is Defective, or the CONTRACTOR fails to supply suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Contracting Officer may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Contracting Officer to stop the Work shall not give rise to any duty on the part of the Contracting Officer to exercise this right for the benefit of the CONTRACTOR or any other party.

#### 12.6 Correction or Removal of Defective Work:

If required by the Contracting Officer, the CONTRACTOR shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Contracting Officer, remove it from the site and replace it with Work which conforms to the requirements of the Contract Documents. The CONTRACTOR shall bear all direct, indirect and consequential costs of such correction removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

#### 12.7 One Year Correction Period:

If within one year after the date of Final Completion or such longer period of time as may be prescribed by Regulatory Requirements or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, the CONTRACTOR shall promptly, without cost to the UNALASKA CITY SCHOOL DISTRICT and in accordance with the Contracting Officer's written instructions, either correct such Defective Work, or, if it has been rejected by the Contracting Officer, remove it from the site and replace it with conforming Work. If the CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the UNALASKA CITY SCHOOL DISTRICT may have the Defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by the CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service for the benefit of the UNALASKA CITY SCHOOL DISTRICT before Substantial Completion of all the Work, the correction period for the item may begin on an earlier date if so provided in the Specifications or by Change Order. Provisions of this paragraph are not intended to shorten the Statute of Limitations for bringing an action.

### 12.8 Acceptance of Defective Work:

Instead of requiring correction or removal and replacement of Defective Work, the Contracting Officer may accept defective Work, the CONTRACTOR shall bear all direct, indirect and consequential costs attributable to the Contracting Officer's evaluation of and determination to accept such Defective Work (costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the UNALASKA CITY SCHOOL DISTRICT shall be entitled to an appropriate decrease in the Contract Price. If the UNALASKA CITY SCHOOL DISTRICT has already made final payment to the CONTRACTOR, an appropriate amount shall be paid by the CONTRACTOR or his Surety to the UNALASKA CITY SCHOOL DISTRICT.

### 12.9 UNALASKA CITY SCHOOL DISTRICT May Correct Defective Work:

If the CONTRACTOR fails within a reasonable time after written notice from the Contracting Officer to proceed to correct Defective Work or to remove and replace rejected Work as required by the Contracting Officer in accordance with paragraph 12.6, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the UNALASKA CITY SCHOOL DISTRICT may, after seven days' written notice to the CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the UNALASKA CITY SCHOOL DISTRICT shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the Contracting Officer may exclude the CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend the CONTRACTOR's services related thereto, take possession of the CONTRACTOR's tool, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or approved remote storage sites or for which the UNALASKA CITY SCHOOL DISTRICT has paid the CONTRACTOR but which are stored elsewhere, the CONTRACTOR shall allow the Contracting Officer and his authorized representatives such access to the site as may be necessary to enable the Contracting Officer to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the UNALASKA CITY SCHOOL DISTRICT or its agents in exercising such rights and remedies will be charge against the CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the UNALASKA CITY SCHOOL DISTRICT shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all cost of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the CONTRACTOR's Defective Work. The CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the Contracting Officer of the UNALASKA CITY SCHOOL DISTRICT's rights and remedies hereunder.

## **ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION**

### 13.1 Schedule of Values:

The Schedule of Values established as provided in paragraph 6.6 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Contracting Officer. Progress payments on account of Unit Price Work will be based on the number of units completed.

### 13.2 Preliminary Payments:

Upon approval of the Schedule of Values the CONTRACTOR may be paid for direct costs substantiated by paid invoices and other prerequisite documents required by the General Requirements. Direct costs shall include the cost of Bonds, insurance, approved materials stored on the site or at approved remote storage sites, deposits required by a Supplier prior to fabricating materials, and other approved direct mobilization costs substantiated as indicated above. These payments shall be included as a part of the total Contract Price as stated in the Contract.

### 13.3 Application for Progress Payment:

The CONTRACTOR shall submit to the Contracting Officer for review an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. Progress payments will be made as the Work

progresses on a monthly basis or twice a month when requested by the CONTRACTOR, but only when the approved invoice exceeds \$10,000.00.

#### 13.4 Review of Applications for Progress Payments:

Contracting Officer will, either indicate in writing a recommendation of payment, or return the Application for Payment to the CONTRACTOR indicating in writing the Contracting Officer's reasons for refusing to recommend payment. If the latter is the case, the CONTRACTOR may make the necessary corrections and resubmit the Application for Payment.

#### 13.5 Stored Materials and Equipment:

If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the UNALASKA CITY SCHOOL DISTRICT has received the materials and equipment free and clear of all charges, security interests and encumbrances and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the UNALASKA CITY SCHOOL DISTRICT's interest therein, all of which will be satisfactory to the Contracting Officer. No payment will be made for perishable materials that could be rendered useless because of long storage periods. No progress payment will be made for living plant materials until planted. The payment may be reduced by an amount equal to transportation and handling cost if the materials are stored offsite, in a remote location, or will require special handling.

#### 13.6 CONTRACTOR's Warranty of Title:

The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the UNALASKA CITY SCHOOL DISTRICT no later than the time of payment free and clear of any claims, liens, security interests and further obligations.

#### 13.7 Withholding of Payments:

The UNALASKA CITY SCHOOL DISTRICT may withhold or refuse payment for any of the reasons listed below provided it gives written notice of its intent to withhold and of the basis for withholding:

- 13.7.1 The Work is Defective, or completed Work has been damaged requiring correction or replacement, or has been installed without approval of Shop Drawing, or by an unapproved Subcontractor.
- 13.7.2 The Contract Price has been reduced by Change Order.
- 13.7.3 The UNALASKA CITY SCHOOL DISTRICT has been required to correct Defective Work or complete Work in accordance with paragraph 12.9.
- 13.7.4 The UNALASKA CITY SCHOOL DISTRICT's actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.2.1.a through 14.2.1.k inclusive.
- 13.7.5 Claims have been made against the UNALASKA CITY SCHOOL DISTRICT or against the funds held by the UNALASKA CITY SCHOOL DISTRICT on account of the CONTRACTOR's actions or inactions in performing this Contract, or there are other items entitling the UNALASKA CITY SCHOOL DISTRICT to a set off.
- 13.7.6 Subsequently discovered evidence or the results of subsequent inspections or test, nullify any previous payments for reasons stated in subparagraphs 13.7.1 through 13.7.5.
- 13.7.7 The CONTRACTOR has failed to fulfill or is in violation of any of his obligations under any provision of this Contract.

#### 13.8 Retainage:

At any time the UNALASKA CITY SCHOOL DISTRICT finds that satisfactory progress is not being made it may in addition to the amounts withheld under 13.7 retain a maximum amount equal to 10% of the total amount earned on all

subsequent progress payments. This retainage may be released at such time as the Contracting Officer finds that satisfactory progress is being made.

#### 13.9 Request for Release of Funds:

If the CONTRACTOR believes the basis for withholding is invalid or no longer exists, immediate written notice of the facts and Contract provisions on which the CONTRACTOR relies, shall be given to the UNALASKA CITY SCHOOL DISTRICT, together with a request for release of funds and adequate documentary evidence proving that the problem has been cured. In the case of withholding which has occurred at the request of the Department of Labor, the CONTRACTOR shall provide a letter from the Department of Labor stating that withholding is no longer requested. Following such a submittal by the CONTRACTOR, the UNALASKA CITY SCHOOL DISTRICT shall have a reasonable time to investigate and verify the facts and seek additional assurances before determining whether release of withheld payments is justified.

#### 13.10 Substantial Completion:

When the CONTRACTOR considers the Work ready for its intended use the CONTRACTOR shall notify the Contracting Officer in writing that the Work of a designated portion thereof is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the UNALASKA CITY SCHOOL DISTRICT issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Contracting Officer, the CONTRACTOR and appropriate Consultant(s) shall make an inspection of the Work to determine the status of completion. If the Contracting Officer does not consider the Work substantially complete, the Contracting Officer will notify the CONTRACTOR in writing giving the reasons therefor. If the Contracting Officer considers the Work substantially complete, the Contracting Officer will within fourteen days execute and deliver to the CONTRACTOR a certificate of Substantial Completion with tentative list of items to be completed or corrected. At the time of delivery of the certificate of Substantial Completion the Contracting Officer will deliver to the CONTRACTOR a written division of responsibilities pending Final Completion with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties which shall be consistent with the terms of the Contract Documents. The UNALASKA CITY SCHOOL DISTRICT shall be responsible for all UNALASKA CITY SCHOOL DISTRICT costs resulting from the initial inspection and the first re-inspection, the CONTRACTOR shall pay all costs incurred by the UNALASKA CITY SCHOOL DISTRICT resulting from re-inspections, thereafter.

#### 13.11 Access Following Substantial Completion:

The UNALASKA CITY SCHOOL DISTRICT shall have the right to exclude the CONTRACTOR from the Work after the date of Substantial Completion, but the UNALASKA CITY SCHOOL DISTRICT shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

#### 13.12 Final Inspection:

Upon written notice from the CONTRACTOR that the entire Work or an agreed portion thereof is complete, the Contracting Officer will make a final inspection with the CONTRACTOR and appropriate Consultants and will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. The CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies. The CONTRACTOR shall pay for all costs incurred by the UNALASKA CITY SCHOOL DISTRICT resulting from re-inspections.

#### 13.13 Final Application for Payment:

After the CONTRACTOR has completed all such corrections to the satisfaction of the Contracting Officer and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of payment to all laborers, Subcontractors and Suppliers, certificates of inspection, marked-up record documents and other documents - all as required by the Contract Documents, and after the Contracting Officer has indicated that the Work is acceptable (subject to the provisions of paragraph 13.17), the CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all certificates, warranties, guaranties, releases, affidavits, and other documentation required by the Contract Documents.

#### 13.14 Final Payment and Final Completion:

13.14.1 If on the basis of the Contracting Officer's observation of the Work during construction and final inspection, and the Contracting Officer's review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, the Contracting Officer is satisfied that the Work has been completed and the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, the UNALASKA CITY SCHOOL DISTRICT will process final Application for Payment. Otherwise, the Contracting Officer will return the Application for Payment to the CONTRACTOR, indicating in writing the reasons for refusing to process final payment, in which case the CONTRACTOR shall make the necessary corrections and resubmit the final Application for Payment.

13.14.2 If, through no fault of the CONTRACTOR, Final Completion of the Work is significantly delayed, the Contracting Officer shall, upon receipt of the CONTRACTOR's final Application for Payment, 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 to be held by the UNALASKA CITY SCHOOL DISTRICT for Work not fully completed or corrected is less than the retainage provided for in paragraph 13.8, and if Bonds have been furnished as required in paragraph 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 UNALASKA CITY SCHOOL DISTRICT with the application for 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.

#### 13.15 Final Acceptance:

Following receipt of the CONTRACTOR's Release with no exceptions, and certification that laborers, Subcontractors and materialmen have been paid, certification of payment of payroll and revenue taxes, and final payment to the CONTRACTOR, the UNALASKA CITY SCHOOL DISTRICT will issue a letter of Final Acceptance, releasing the CONTRACTOR from further obligations under the Contract, except as provided in paragraph 13.16.

#### 13.16 CONTRACTOR's Continuing Obligation:

The CONTRACTOR's obligation to perform and complete the Work and pay all laborers, Subcontractors, and materialmen in accordance with the Contract Documents shall be absolute. Neither any progress or final payment by the UNALASKA CITY SCHOOL DISTRICT, nor the issuance of a certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by the UNALASKA CITY SCHOOL DISTRICT of Using Agency, nor any act of acceptance by the UNALASKA CITY SCHOOL DISTRICT nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor any correction of Defective Work by the UNALASKA CITY SCHOOL DISTRICT will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

#### 13.17 Waiver of Claims by CONTRACTOR:

The making and acceptance of final payment will constitute a waiver of all claims by the CONTRACTOR against the UNALASKA CITY SCHOOL DISTRICT other than those previously made in writing and still unsettled.

#### 13.18 No Waiver of Legal Rights:

The UNALASKA CITY SCHOOL DISTRICT shall not be precluded or be stopped by any payment, measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefor, from showing the true amount and character of the Work performed and materials furnished by the CONTRACTOR, nor from showing that any payment, measurement, estimate or certificate is untrue or is incorrectly made, or that the Work or materials are Defective. The UNALASKA CITY SCHOOL DISTRICT shall not be precluded or stopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the CONTRACTOR or his Sureties, or both, such damages as it may sustain by reason of his failure to comply with requirements of the Contract Documents. Neither the acceptance by the UNALASKA CITY SCHOOL DISTRICT, or any representative of the UNALASKA CITY SCHOOL DISTRICT, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of the Contract Time, nor any possession taken by the UNALASKA CITY SCHOOL DISTRICT, shall operate as a waiver of any portion of the Contract, or of the power herein reserved, or of any

right to damages. A waiver by the UNALASKA CITY SCHOOL DISTRICT of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

#### **ARTICLE 14 - SUSPENSION OF WORK, DEFAULT AND TERMINATION**

##### 14.1 UNALASKA CITY SCHOOL DISTRICT May Suspend Work:

14.1.1 The UNALASKA CITY SCHOOL DISTRICT may, at any time suspend the Work or any portion thereof by notice in writing to the CONTRACTOR. If the Work is suspended without cause the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if the CONTRACTOR makes an approved claim therefor as provided in Article 15. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that suspension is due to the fault or negligence of the CONTRACTOR, or that suspension is necessary for Contract compliance, or that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR.

14.1.2 In case of suspension of Work, the CONTRACTOR shall be responsible for preventing damage to or loss of any of the Work already performed and of all materials whether stored on or off the site or approved remote storage sites.

##### 14.2 Default of Contract:

###### 14.2.1 If the CONTRACTOR:

- a. Fails to begin the Work under the Contract within the time specified in the "Proposal", or
- b. Fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workmen or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 6.6 as revised from time to time), or
- c. Performs the Work unsuitably or neglects or refuses to remove materials or to correct Defective Work.
- d. Discontinues the prosecution of the Work, or
- e. Fails to resume Work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency except as prohibited by 11 U.S.C. 363e, or
- g. Allows any final judgment to stand against him unsatisfied for period of 60 days, or
- h. Makes an assignment for the benefit of creditors without the consent of the Contracting Officer, or
- i. Disregards Regulatory Requirements of any public body having jurisdiction, or
- j. Otherwise violates in any substantial way any provisions of the Contract Documents, or
- k. For any cause whatsoever, fails to carry on the Work in an acceptable manner, the Contracting Officer may give notice in writing to the CONTRACTOR and his Surety of such delay, neglect, or default.

If the CONTRACTOR or Surety, within the time specified in the above Notice of Default, shall not proceed in accordance therewith, then the UNALASKA CITY SCHOOL DISTRICT may, upon written notification from the Contracting Officer of the fact of such delay, neglect or default and the CONTRACTOR's failure to comply with such notice, have full power and authority without violating the Contract, to take the prosecution of the Work out of the hands of the CONTRACTOR. The UNALASKA CITY SCHOOL DISTRICT may terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the site and take possession of the Work and of all the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and

use the same to the full extent they could be used by the CONTRACTOR (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the UNALASKA CITY SCHOOL DISTRICT has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the UNALASKA CITY SCHOOL DISTRICT may deem expedient. The UNALASKA CITY SCHOOL DISTRICT may enter into an agreement for the completion of said Contract according to the terms and provisions thereof, or use such other methods that in the opinion of the Contracting Officer are required for the completion of said Contract in an acceptable manner.

- 14.2.3 The Contracting Officer may, by written notice to the CONTRACTOR and his Surety or his representative, transfer the employment of the Work from the CONTRACTOR to the Surety, or if the CONTRACTOR abandons the Work undertaken under the Contract, the Contracting Officer may, at his option with written notice to the Surety and without any written notice to the CONTRACTOR, transfer the employment for said Work directly to the Surety. The Surety shall submit its plan for completion of the Work, including any contracts or agreements with third parties for such completion, to the UNALASKA CITY SCHOOL DISTRICT for approval prior to beginning completion of the Work. Approval of such contracts shall be in accordance with all applicable requirements and procedures for approval of subcontracts as stated in the Contract Documents.
- 14.2.4 Upon receipt of the notice terminating the services of the CONTRACTOR, the Surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the Work included under the Contract and employ by contract or otherwise any person or persons to finish the Work and provide the materials therefor, without termination of the continuing full force and effect of this Contract. In case of such transfer of employment to the Surety, the Surety shall be paid in its own name on estimates covering Work subsequently performed under the terms of the Contract and according to the terms thereof without any right of the CONTRACTOR to make any claim for the same or any part thereof.
- 14.2.5 If the Contract is terminated for default, the CONTRACTOR and the Surety shall be jointly and severally liable for damages for delay as provided by Article 11.8, and for the excess cost of completion, and all costs and expenses incurred by the UNALASKA CITY SCHOOL DISTRICT in completing the Work or arranging for completion of the Work, including but not limited to costs of assessing the Work to be done, costs associated with advertising, soliciting or negotiating for bids or proposals for completion, and other procurement costs. Following termination the CONTRACTOR shall not be entitled to receive any further balance of the amount to be paid under the contract until the work is fully finished and accepted, at which time if the unpaid balance exceeds the amount due the UNALASKA CITY SCHOOL DISTRICT and any amounts due to persons for whose benefit the UNALASKA CITY SCHOOL DISTRICT has withheld funds, such excess shall be paid by the UNALASKA CITY SCHOOL DISTRICT to the CONTRACTOR. If the damages, costs, and expenses due the UNALASKA CITY SCHOOL DISTRICT exceed the unpaid balance, the CONTRACTOR and his Surety shall pay the difference.
- 14.2.6 If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that termination was wrongful, the rights and obligations of the parties shall be determined in accordance with the clause providing for convenience termination.

### 14.3 Rights or Remedies:

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

### 14.4 Convenience Termination:

- 14.4.1 The performance of the Work may be terminated by the UNALASKA CITY SCHOOL DISTRICT in accordance with this section in whole or in part, whenever, for any reason the Contracting Officer shall determine that such termination is in the best interest of the UNALASKA CITY SCHOOL DISTRICT. Any such termination shall be effected by delivery to the CONTRACTOR of a Notice of Termination, specifying

termination is for the convenience of the UNALASKA CITY SCHOOL DISTRICT the extent to which performance of Work is terminated, and the date upon which such termination becomes effective. Immediately upon receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer the CONTRACTOR shall:

- a. Stop Work on the date and to the extent specified in the Notice of Termination;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work as is not terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- d. With the written approval of the Contracting Officer, to the extent he may require, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the Contract;
- e. Submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory exclusive of items the disposition of which had been directed or authorized by the Contracting Officer;
- f. Transfer to the Contracting Officer the completed or partially completed record drawings, Shop Drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the UNALASKA CITY SCHOOL DISTRICT;
- g. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the CONTRACTOR and in which the UNALASKA CITY SCHOOL DISTRICT has or may acquire any interest. The CONTRACTOR shall proceed immediately with the performance of the above obligations.

14.4.2 When the UNALASKA CITY SCHOOL DISTRICT orders termination of the Work effective on a certain date, all Work in place as of that date will be paid for in accordance with the Basis of Payment clause of the Contract. Materials required for completion and on hand but not incorporated in the Work will be paid for at cost plus 15% with materials becoming the property of the UNALASKA CITY SCHOOL DISTRICT - or the CONTRACTOR may retain title to the materials and be paid an agreed upon lump sum. Materials on order shall be canceled, and the UNALASKA CITY SCHOOL DISTRICT shall pay reasonable factory cancellation charges with the option of taking delivery of the materials in lieu of payment of cancellation charges. The CONTRACTOR shall be paid 10% of the cost, freight not included, of materials canceled, and direct expenses only for CONTRACTOR chartered freight transport which cannot be canceled without charges, to the extent that the CONTRACTOR can establish them. The extra costs due to cancellation of Bonds and insurance and that part of job start-up and phase-out costs not amortized by the amount of Work accomplished shall be paid by the UNALASKA CITY SCHOOL DISTRICT. Charges for loss of profit or consequential damages shall not be recoverable except as provided above.

14.4.3 The termination claim shall be submitted promptly, but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the CONTRACTOR made in writing within the 90-day period. Upon failure of the CONTRACTOR to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall thereupon pay to the CONTRACTOR so determined.

14.4.4 The CONTRACTOR and the Contracting Officer may agree upon whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of the Work pursuant to this section. The Contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount. In the event of the failure of the CONTRACTOR and the Contracting Officer to agree in whole or in part, as provided heretofore, as to the amounts with respect to costs to be paid to the CONTRACTOR in connection with the termination of the Work the Contracting Officer shall determine, on the basis of

information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amount determined as follows:

- a. All costs and expenses reimbursable in accordance with the Contract not previously paid to the CONTRACTOR for the performance of the Work prior to the effective date of the Notice of Termination;
- b. So far as not included under "a" above, the cost of settling and paying claims arising out of the termination of the Work under subcontracts or orders which are properly chargeable to the terminated portions of the Contract;
- c. The reasonable costs of settlement with respect to the terminated portion of the Contract heretofore, to the extent that these costs have not been covered under the payment provisions of the Contract.

14.4.5 The CONTRACTOR shall have the right of appeal under the UNALASKA CITY SCHOOL DISTRICT's claim procedures, as defined in Article 15, for any determination made by the Contracting Officer, except if the CONTRACTOR has failed to submit his claim within the time provided and has failed to request extension of such time, CONTRACTOR shall have no such right of appeal. In arriving at the amount due the CONTRACTOR under this section, there shall be deducted:

- a. All previous payments made to the CONTRACTOR for the performance of Work under the Contract prior to termination;
- b. Any claim for which the UNALASKA CITY SCHOOL DISTRICT may have against the CONTRACTOR;
- c. The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the CONTRACTOR or sold pursuant to the provisions of this section and not otherwise recovered by or credited to the UNALASKA CITY SCHOOL DISTRICT; and,
- d. All progress payments made to the CONTRACTOR under the provisions of this section.

14.4.6 Where the Work has been terminated by the UNALASKA CITY SCHOOL DISTRICT said termination shall not affect or terminate any of the rights of the UNALASKA CITY SCHOOL DISTRICT against the CONTRACTOR or his Surety then existing or which may thereafter accrue because of such default. Any retention or payment of monies by the UNALASKA CITY SCHOOL DISTRICT due to the CONTRACTOR under the terms of the Contract shall not release the CONTRACTOR or his Surety from liability. Unless otherwise provided for in the Contract Documents, or by applicable statute, the CONTRACTOR, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the UNALASKA CITY SCHOOL DISTRICT at all reasonable times at the office of the CONTRACTOR, all its books, records, documents, and other evidence bearing on the cost and expenses of the CONTRACTOR under his Contract and relating to the Work terminated hereunder.

## **ARTICLE 15 - CLAIMS AND DISPUTES**

### 15.1 Notification:

In addition to the notice requirements set out elsewhere in this Contract, if the CONTRACTOR becomes aware of any act or occurrence which may form the basis of a claim by the CONTRACTOR for additional compensation or an extension of time for performance, or if any dispute arises regarding a question of fact or interpretation of the contract, the CONTRACTOR shall immediately inform the Project Manager. If the matter cannot be resolved by agreement within 7 days, the CONTRACTOR shall, within the next 14 days, submit Intent to Claim in writing to the Project Manager. The Claim, if not resolved, shall be presented to the Project Manager, in writing, within 60 days following receipt of the Intent to Claim. Receipt of the Claim will be acknowledged in writing by the Project Manager. The CONTRACTOR agrees that unless these written notices are provided, the CONTRACTOR will have no entitlement to additional time or compensation for such act, event or condition. The CONTRACTOR shall in any case continue diligent performance of the Contract.

## 15.2 Presenting Claim:

The Claim shall specifically include the following:

- 15.2.1 The act, event or condition giving rise to the claim.
- 15.2.2 The Contract provisions which apply to the claim and under which relief is provided.
- 15.2.3 The item or items of Contract Work affected and how they are affected.
- 15.2.4 The specific relief requested, including contract time if applicable, and the basis upon which it was calculated.

## 15.3 Claim Validity, Additional Information, and Project Manager's Actions:

The Claim, in order to be valid, must not only show that the CONTRACTOR suffered damages or delay but that those conditions were actually a result of the act, event or condition complained of and that the Contract provides entitlement to relief to the CONTRACTOR for such act, event, or condition. The Project Manager reserves the right to make written request to the CONTRACTOR at any time for additional information which the CONTRACTOR may possess relative to the Claim. The CONTRACTOR agrees to provide the Project Manager such additional information within 30 days of receipt of such a request. Failure to furnish such additional information may be regarded as a waiver of the Claim. The Claim, if not resolved by agreement within 60 days of its receipt, will automatically be forwarded to the Contracting Officer for formal written decision.

## 15.4 Contracting Officer's Decision:

The CONTRACTOR will be furnished the Contracting Officer's Decision within the next 90 days, unless additional information is requested by the Contracting Officer. The Contracting Officer's Decision is final and conclusive unless fraudulent as to the Claim.

## 15.5 Notice of Appeal:

Within 30 days of receipt of the Decision, the CONTRACTOR may deliver a Notice of Appeal to the Unalaska City School District Superintendent of Schools. The Notice of Appeal shall include specific exceptions to the Contracting Officer's Decision, including specific provisions of the contract, which the CONTRACTOR intends to rely upon in the appeal. General assertions that the Contracting Officer's decision is contrary to law or fact are not sufficient.

## 15.6 Unalaska City School District Superintendent's Decision:

The decision of the Unalaska City School District Superintendent will be rendered within 120 days of Notice of Appeal. This decision constitutes the exhaustion of contractual and administrative remedies. The time limits given above may only be extended by mutual consent. The decision of the Unalaska City School District Superintendent shall be final and conclusive unless the CONTRACTOR commences action through the court within 120 days from receipt thereof.