

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND HIGHWAY
IMPROVEMENT INC. FOR ASPHALT SURFACE CRACK SEALING
PROJECT NO. ST11-1899 / CIP NO. 50549**

This Agreement is made and entered into this 17 day of May, 2011, by and between the City of Rapid City, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the "City," and Highway Improvement Inc., P.O. Box 1803, Sioux Falls, South Dakota 57101, herein after referred to as the "Contractor."

WHEREAS, the City desires to retain a contractor to provide crack sealing services on asphalt streets within the City; and

WHEREAS, the Contractor was the lowest responsible bidder for the same service with the City of Belle Fourche within the last twelve months; and

WHEREAS, the Contractor is willing to perform crack sealing for the City of Rapid City at the same price as it agreed to perform the work for the City of Belle Fourche; and

WHEREAS, upon reviewing this bid, City engineering staff is of the opinion that this is a favorable rate for the work to be performed and awarding the contract to the Contractor for this amount is in the City's best interests; and

WHEREAS, the City is awarding this contract without competitive bidding pursuant to the exception contained in SDCL 5-18A-22(3), which allows a local government entity to purchase an item from the lowest responsible bidder of an item competitively bid in the last twelve months by itself, or another governmental entity, at or below the bid price.

NOW THEREFORE, the parties hereby agree as follows:

1. The Contractor shall provide crack sealing services to the City at a rate of \$.60 a foot. The work shall be performed in accordance with the General and Special Conditions incorporated in the April 20, 2011, agreement with the City of Belle Fourche and the City's Standard Specifications for Public Works Construction. If there is a conflict between the City's criteria and/or design standards and the general or special conditions contained in the contract with the City of Belle Fourche, the City standards shall control.
2. The work to be performed under this Contract shall commence within ten (10) calendar days after the Contractor is notified by the City to proceed, and shall be completed on or before June 30, 2011.

Liquidated damages will be charged for failure to complete the project on or before the completion date as specified herein. Requests for time extensions shall be made in writing to the City Council as soon as possible before the project completion date. All time extensions will be issued by the City Council and will be granted only for good cause beyond the control of the Contractor.

3. The Contractor shall perform the work at the direction of the City Engineer or their designee. The Contractor shall invoice the City for work actually performed. The City shall promptly pay Contractor upon review and approval of the invoices. The City anticipates that 325,000 feet of crack sealing will be performed with a maximum total contract price of \$195,200. The Contractor will be paid for work actually performed at the rate described in paragraph one up to \$195,200, which includes a \$200 mobilization fee. The parties acknowledge that actual quantities and final payment may be less.
4. This Agreement along with the bid documents and contract with the City of Belle Fourche constitutes the entire agreement of the parties. Copies of the Belle Fourche documents are attached hereto and incorporated herein by this reference. No other documents or statements are incorporated herein.
5. This Agreement is governed under the laws of the State of South Dakota. Any action concerning this Agreement shall be venued in Pennington County, South Dakota in the Circuit Court for the Seventh Judicial Circuit.

CITY OF RAPID CITY

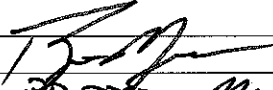
Mayor

ATTEST:

Finance Officer

(SEAL)

HIGHWAY IMPROVEMENT INC.

By: 
Its: PROJECT MANAGER

State of South Dakota)
 ss.
 County of Pennington)

On this the _____ day of _____, 2011, before me, the undersigned officer, personally appeared Alan Hanks and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing Agreement for the purposes therein contained by signing the name of the City of Rapid City by themselves as its Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

 Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of SD)
)ss.
 County of Pennington)

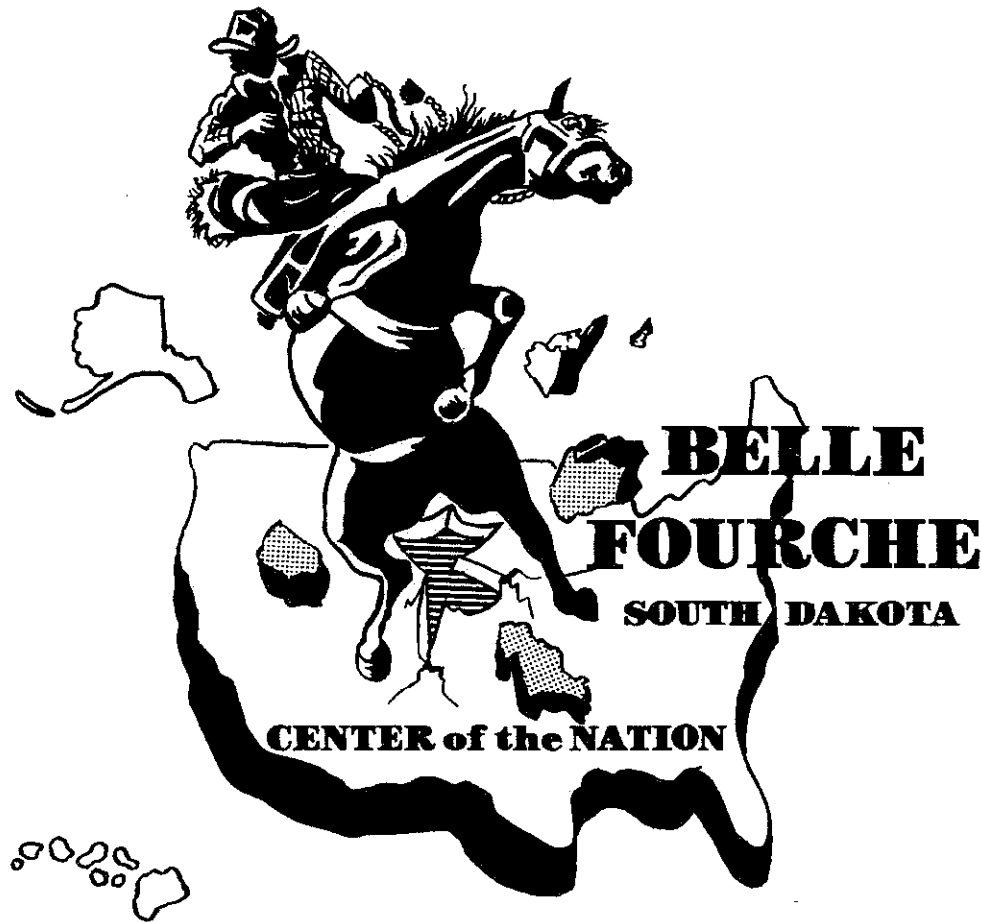
On this 5 day of May, 2011, before me, the undersigned officer, personally appeared Brett Meadors, who acknowledged himself to be the Project mgr of Highway Improvement Inc. and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Doni Brown
 Notary Public

My Commission Expires: **My Commission Expires
June 8, 2014**

(SEAL)



**CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR
ASPHALT CRACK SEALING PROJECT NO. 2011-3
BID OPENING
APRIL 12, 2011 - 1:00 O'CLOCK P.M.
CITY COUNCIL CHAMBERS
CITY OF BELLE FOURCHE, SOUTH DAKOTA**

INDEX

Notice to Bidder----- NB-1

Information and Instruction to Bidders----- I1/I4

Bid Proposal----- BP1/BP3

Contract----- CC1/CC2

General Conditions----- GC1/GC15

Special Provisions for Asphalt Crack Sealing----- SC1/SC3

INFORMATION AND INSTRUCTIONS TO BIDDERS

2.1 PROPOSAL REQUIREMENTS

All proposals must be made on forms provided in the bound copy of the specifications and contract stipulations hereto attached. All proposals must be legibly written in ink, with all prices given in words and figures and the written words shall govern. No alterations in proposals or in the printed forms will be permitted by erasures or interlineations. Each proposal, in its bound form as furnished by the City, shall be enclosed in a sealed envelope addressed to the Finance Officer, Belle Fourche, South Dakota, and endorsed on the outside with the bidder's name and address and with the words, "**Sealed Bid ----*** (Project Name and Number)**", and filed at the Finance Office in Belle Fourche prior to the hour set for the opening of the bids.

Proposals shall be strictly in accordance with the prescribed forms. Proposals carrying riders or qualifications of the bid as submitted may be rejected. The proposals shall be based on the Contractor furnishing all the necessary labor, tools, materials, and equipment to fully construct the project items in accordance with the detailed plans and specifications covering the work.

Each proposal in the amount of \$25,000.00 or greater, for this contract shall, as a guarantee of good faith on the part of the bidder, be accompanied by a certified check or cashier's check, or bank draft for five percent (5%) of the amount of the bid, such check to be certified or issued by a State or National Bank and payable to the City of Belle Fourche, South Dakota, or in lieu thereof, a bid bond for ten percent (10%) of the amount bid, issued by a surety authorized to do business in South Dakota, as a guarantee of the bidder entering into a contract for the construction of the work and furnishing a 100% Performance and Payment Bond.

The proposal guarantee, when required, shall be made payable, without conditions, to the City of Belle Fourche. The bid security will be retained by, and forfeited to the City if such proposal is accepted and the contract awarded, and the bidder fails to enter into the prescribed contract and furnish the specified bond within ten (10) days after the award is made by the City.

Each proposal must be signed in ink, by the bidder with his full name and with his full address. In case of a firm, the name and residence of each member must be inserted; and in case the proposal is submitted by, or in behalf of a Corporation, it must be signed in the name of such Corporation by an official authorized to bind the bidder.

2.2 ADDENDA AND INTERPRETATIONS

No interpretation of the meaning of the plans, specifications, or other pre-bid documents will be made to any bidder orally. Every request for such interpretation should be in writing addressed to the Interim City Engineer, City of Belle Fourche, 511 6th Avenue, Belle Fourche, South Dakota, 57717, and to be given consideration, must be received at least three (3) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be

in the form of written addenda to the plans and specifications, which, if issued, will be mailed by certified mail with return receipt requested or personal delivery to all prospective bidders at the respective addresses furnished for such purposes. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

2.3 TIME OF COMPLETION

The time of completion of the work is of vital importance to the City and the contractor will be required to complete the work within the time stipulated in the proposal. It will be necessary for the bidder to satisfy the City of his ability to execute the work within the stipulated time.

2.4 MODIFICATION OF BIDS

No modifications of bids already submitted will be considered unless such modifications are received prior to the hour set for opening bids, Telegraphic modifications will be rejected unless they conform to SDCL 5-18-8 and are confirmed in writing over signature of the bidder within forty-eight (48) hours of the time sent.

2.5 WITHDRAWAL OF BIDS

A bidder may withdraw his proposal at any time prior to the expiration of the period during which proposals may be submitted. Proposals may be withdrawn by letter, telegraphic communications, or in person before the time specified in the advertised notice. No bidder may withdraw a proposal after the date and hour set for bid opening as noted in the advertised notice.

2.6 REJECTION OF BIDS

The City reserves the right to award the work as is most advantageous to the City, or reject any or all bids.

2.7 RETURN OF PROPOSAL GUARANTEE

The City may retain the bid check or bond for a period not to exceed thirty (30) days from date of bid opening pending the approval and award of contract. The check or bond of the successful bidder which has been retained will be returned when the Contractor to whom the contract has been awarded has furnished and filed the necessary number of signed contracts and bonds with the City.

2.8 BOND REQUIREMENTS

The Contractor to whom the work is awarded, if required, will give a Surety Bond to the City, executed by a reliable and accredited Surety authorized to do business in the State of South Dakota; acceptable to the City of Belle Fourche; signed by an "Attorney in Fact" of residence in South Dakota and in an amount equal to the total of the contract as a guarantee of the full performance

and completion of the contract and payment of all labor and all material bills. The bond shall be in the form provided or in a form approved by the City of Belle Fourche.

2.9 BOND COPY OF CONTRACT DOCUMENTS

None of the Notices, Instructions to Bidders, Proposal, Insurance Forms, Bond Forms, General Conditions, Special Provisions, Special Conditions, Detailed Specifications, and Addenda shall be removed from the bound copy of the contract Documents prior to filing the same.

2.10 CONTRACT AWARD

No contract or other contract documents shall be executed until the proposal and qualifications of the bidders have been examined and the award of the contract authorized by the City. No such document shall be effective until it has been approved by the City as to final execution.

2.11 INSURANCE REQUIREMENTS

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain, until the work is completed and accepted by the City, minimum insurance coverage in accordance with the requirements established in Form A which is attached hereto.

The Contractor shall submit two copies of a Certificate of Liability Insurance detailing the limits of insurance coverage and project description. The Contractor's insurance carrier or agent shall complete the City's copies in sufficient time to allow for review by the City Engineer prior to the actual start of work by the Contractor.

2.12 EQUAL EMPLOYMENT OPPORTUNITY

Attention of Bidders is particularly called to the requirement that the Contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, national origin, or if physically handicapped.

FORM A**INSURANCE REQUIREMENTS CONSTITUTING PART OF THE CONTRACT
THE CITY OF BELLE OF FOURCHE AND THE CONTRACTOR**

Without limiting any of the other obligation or liabilities of the Contractor, the Contractor shall provide and maintain, until the work is completed and accepted by the City, minimum insurance coverage as follows:

<u>TYPE OF COVERAGE</u>	<u>LIMITS</u>
<u>Workman's Compensation</u>	Statutory
<u>General Liability</u> Contractual, Personal, Injury, Bodily Injury and Property Damage	<u>\$1,000,000.00</u> <u>\$2,000,000.00</u> Each Occur. Aggregate
<u>Automobile Public Liability</u> Covering all automobiles, trucks, tractors, trailers, motorcycles, or other automotive equipment whether owned or rented by the Contractor, or owned by employees of the Contractor.	<u>\$1,000,000.00</u> Combined Single Limit
Railroad Sidetrack Agreement: (When Applicable)	<u>\$1,000,000.00</u> <u>\$2,000,000.00</u> Each Occur. Aggregate

The Contractor shall, before commencing work under this Contract, attach to each copy of the executed Contract a copy of a Certificate of Insurance completed by his insurance carrier or agent certifying that minimum insurance coverage as required above is in effect and will not be cancelled or changed until thirty (30) days after written notice is given the City of Belle Fourche.

The City of Belle Fourche shall be named as an additional insured on all policies.

**BIDDER'S PROPOSAL
FOR
ASPHALT CRACK SEALING PROJECT NO. 2011-3**

DATE: _____

**TO: The Honorable Mayor and Common Council
Belle Fourche, South Dakota**

In compliance with your invitation for bids to furnish all necessary labor, materials and equipment to construct in all detail **Asphalt Crack Sealing Project No. 2011-3**, complete and ready for use as described by the detailed Plans and Specifications as prepared by the Belle Fourche City Interim Engineer and now on file in the Finance Office, 511 6th Avenue, Belle Fourche, South Dakota, the undersigned bidder:

(1) A Corporation organized and existing under the laws of the State of _____.

(2) A Partnership consisting of _____

_____.

(3) An Individual trading as _____

of the City of _____

State of _____.

having examined the detailed Plans and Specifications and Contract, and being fully advised of the materials to be furnished and the work to be done in connection with the project, does hereby propose to furnish all of the necessary labor, tools, materials, and equipment and do all the work as specified to fully complete said work as described by said Plans and Specifications at the following prices, **TO WIT:**

**BID SCHEDULE
ASPHALT CRACK SEAL PROJECT NO. 2011-3**

Item No.	Description	Estimated Quantities	Unit Price	Amount
1	Routing and Sealing Class I Cracks	8,000 L.F.	_____	\$ _____
2	Mobilization	Lump Sum	_____	\$ _____

TOTAL AMOUNT BID \$ _____

(Total Amount Bid in Words)

Work Completion Date: June 15, 2011

BIDDER'S PROPOSAL (Cont.)

IN CASE OF ERROR IN THE EXTENSION OF PRICES, UNIT PRICE GOVERNS. IN CASE OF ERROR IN SUMMATION, BID AMOUNT CORRECTED AND TOTALED GOVERNS.

Above quantities are estimated and will be used to canvass bids, but payment will be made only for actual quantities of work completed, subject to measurement and payment methods explained in the Specifications.

The undersigned certifies that he has personally inspected the actual location of the work together with the local sources of supply and that he understands the conditions under which the work is to be performed, or, if he has not so inspected the actual location of work, that he waives all right to plead any misunderstanding regarding the location of the work or the conditions peculiar to the same.

The within Bidder's Proposal is based upon the conditions and stipulations within the Contract Documents and shall be considered a part of this Contract as if written herein at length. The work to be performed under this Contract shall be commenced within ten (10) calendar days after the Contractor is notified by the City to proceed and shall be completed on or before **June 15, 2011**.

The said Bidder further agrees and states that he has read the advertisement call for bids, has studied the Contract Documents, is familiar with the terms and conditions stipulated therein, agrees to enter into the attached Contract, and acknowledges the receipt of the following addendum:

ADDENDUM NO.

DATED

NAME OF COMPANY: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

GENERAL CONDITION

GC-1 Contract And Contract Documents	GC-27 Construction Schedule and Periodic Estimates
GC-2 Definitions	GC-28 Payment to Contractor
GC-3 Additional Instructions and Detail Drawings	GC-29 Acceptance of Final Payment as Release
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GC-6 Materials, Services and Facilities	GC-32 Contract Security
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GC-10 Substitutions	GC-36 Separate Contract
GC-11 Patents	GC-37 Subcontracting
GC-12 Surveys, Permits and Regulations	GC-38 Engineer's Authority
GC-13 Contractor's Obligations	GC-39 Use of Premises and Removal of Debris
GC-14 Contractor's Understanding	GC-40 Quantities of Estimate
GC-15 Weather Conditions	GC-41 Land and Right-of-Way
GC-16 Protection of Work, Property and Persons	GC-42 General Guaranty
GC-17 Inspection	GC-43 Conflicting Conditions
GC-18 Reports, Records and Data	GC-44 Notice and Service Thereof
GC-19 Superintendence by Contractor	GC-45 Required Provisions Deemed Inserted
GC-20 Changes In Work	GC-46 Arbitration
GC-21 Extras	GC-47 Taxes
GC-22 Claims for Extra Costs	GC-48 Unbalanced Bids
GC-23 Time for Completion and Liquidated Damages	GC-49 Payment Requirement
GC-24 Correction of Work	GC-50 Clean Air Act
GC-25 Lien Waiver	
GC-26 Suspension of Work	

GC-1 CONTRACT AND CONTRACT DOCUMENTS

The plans, specifications, addenda, special provisions, special conditions, and supplemental general conditions shall form part of the contract documents and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the contract documents and in no way affect, limit, or cast light on the interpretation of the provision to which they refer.

GC-2 DEFINITIONS

Whenever used in the contract document, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

- A. **Addenda:** Written or graphic instructions issued prior to the bid opening which modify or interpret the contract documents, drawings, and specifications, by additions, deletions, clarifications or corrections.
- B. **Bid:** The offer or proposal of the bidder submitted on the prescribed form setting forth the work to be performed.
- C. **Bidder:** Any person, firm, or corporation submitting a bid for the work.
- D. **Bonds:** Bid, performance and payment bonds and other instruments or security, furnished by the contractor and his surety in accordance with the contract documents.
- E. **Change order:** A written order to the contractor authorizing an addition, deletion, or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.
- F. **Contract documents:** The contract, including advertisement for bids, information and instruction to bidders, proposal, bid bond, performance and payment bond, notice of award, notice to proceed, plans, specifications, and addenda.
- G. **Contract price:** The total monies payable to the contractor under the terms and conditions of the contract.
- H. **Contract time:** The number of calendar day stated in the contract for completion of the work or the date specified in the contract that the work is to be completed.
- I. **Contractor:** The person, firm, or corporation with whom the city has executed the contract.
- J. **Plans:** The part of the contract documents which shows the characteristics and scope of the work to be performed and which have been prepared or approved by the city.
- K. **Engineer:** The Belle Fourche City Engineer or his designee.
- L. **Field order:** A written order effecting a change in the work not involving an adjustment in the contract price or an extension of contract time, issued by the engineer to the contractor during construction.
- M. **Notice of award:** The written notice of the acceptance of the bid from the city to the successful bidder.
- N. **Notice to proceed:** Written communication issued by the city to the contractor authorizing him to proceed with work and establishing the date of commencement of work.

- O. Owner:** The City of Belle Fourche, South Dakota.
- P. Project:** The undertaking to be performed as provided in the contract documents.
- Q. Shop drawings:** All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the contractor, a subcontractor, manufacturer, supplier, or distributor, which illustrates how specific portions of the work shall be fabricated or installed.
- R. Specifications:** A part of the contract documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standard, and workmanship.
- S. Subcontractor:** An individual, firm, or corporation having a direct contract with the contractor or with any other subcontractor for the performance of a part of the work at the site.
- T. Substantial completion:** That date as certified by the engineer when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the contract documents, so that the project or specified part can be utilized for the purposes for which it is intended.
- U. Supplier:** Any person, firm, or corporation who supplies materials or equipment for the work, including that fabricated to a special design, but who does not perform labor at the site.
- V. Work:** All labor necessary to produce the construction required by the contract documents, and all materials and equipment incorporated or to be incorporated in the project.
- W. Written notice:** Any notice to any party of the contract shall be in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative.

GC-3 ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the contractor will coordinate with the contract documents. The contractor shall carry out the work in accordance with the additional drawings and instructions. The contractor and the Engineer will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, are to be furnished by the Engineer in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture testing and installation of materials, supplies, and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

GC-4 DRAWINGS AND SPECIFICATIONS

The intent of the drawings and specifications is that the Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the work in accordance with the Contract Documents and all incidental work necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the City.

In case of conflict between the drawings and specifications, the specifications shall govern. Figure dimensions on drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings.

The Contractor shall not take advantage of any apparent error or omission on the plans and specifications. Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported to the Engineer in writing, who shall promptly correct such inconsistencies or ambiguities.

GC-5 SHOP OR SETTING DRAWINGS

The Contractor shall submit promptly to the Engineer four copies of each shop or setting drawing prepared in accordance with the predetermined schedule. After examination of such drawings by the Engineer and return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Engineer with two corrected copies. Regardless of corrections made in or approval given to such drawings by the Engineer, the Contractor will nevertheless be responsible for the accuracy of such drawings and for their conformity to the plans and specifications, unless he furnishes the Engineer, in writing, of any deviations at the time he furnishes such drawings.

GC-6 MATERIALS, SERVICES AND FACILITIES

It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractors shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.

GC-7 SUNDAY, HOLIDAY, AND NIGHT WORK

In case the Contractor finds it necessary to work on Saturday, he shall advise the Engineer at least forty-eight (48) hours ahead of such work period. No work shall be done on Sundays, holidays, or at night outside of usual daytime working hours, except in emergencies beyond the Contractor's control, whereby the work would be endangered, or hazardous to life or property. The Contractor shall give the Engineer all possible advance warning of such emergency work periods. Any work necessary to be performed after regular hours, on Sundays, or holidays, shall be performed without additional expense to the City.

GC-8 CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

GC-9 INSPECTION AND TESTING OF MATERIALS

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The City shall select the laboratory or inspection agency. The City will pay for all laboratory inspection service direct, and not as a part of the Contract, unless specifically noted otherwise.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specification and suitability for user purpose.

GC-10 SUBSTITUTIONS

Whenever a materials, article or piece of equipment is identified on the plans or in the Specifications by reference to manufacturer's or vendor's names, trade names, catalog numbers, etc., it is intended merely to establish a standard; and any materials, or equipment, of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable, provided the material, article or equipment so proposed is, in the opinion of the Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Engineer's written approval.

GC-11 PATENTS

The Contractor shall hold and save the City and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention process, article, or appliance manufactured or used in the performance of the Contract, including use by the City, unless otherwise specifically stipulated in the Contract Documents.

License or Royalty Fee: License and/or Royalty Fees for the use of a process which is authorized by the City for the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the City and not by or through the Contractor.

If the Contractor uses any design, device, or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device, or materials. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the City from any and all claims for infringement by reason of the use of such patented or copyrighted design, device, or materials or any trademark or copyright in connection with work agreed to be performed under this Contract, and shall indemnify the City for any cost, expense, or damage including attorney fees, which it may be obligated to pay by reason of such infringement at any time.

GC-12 SURVEYS, PERMITS, AND REGULATIONS

Unless otherwise expressly provided for in this Contract, the City shall furnish all lines and grades from benchmarks and base lines shown on the drawings. All base lines, benchmarks, and stakes shall be carefully preserved by the Contractor, and in the case of destruction, or removal by the Contractor or his employees, they shall be replaced at the Contractor's expense. The Contractor shall procure and pay for permits, licenses, and approvals necessary for the execution of the Contract. The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to the performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences, or other protective facilities.

GC-13 CONTRACTOR'S OBLIGATIONS

The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all that is required by this Contract, within the time herein specified, in accordance with the provisions of this Contract and said specifications and in accordance with the plans and drawings covered by this Contract and any and all supplemental plans and drawings, and in accordance with the directions of the Engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required to complete the project. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the City.

GC-14 CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the Contractor will, by careful examination, satisfy himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions and all other matters which can in any way affect the work under this Contract. No verbal agreement or conversation with any officer, agent, or employee of the City, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

GC-15 WEATHER CONDITIONS

In the event of temporary suspension of work, or during inclement weather, or whenever the Engineer shall direct, the Contractor will, and cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect his work, such materials shall be removed and replaced at the expense of the Contractor.

GC-16 PROTECTION OF WORK, PROPERTY AND PERSONS

The Contractor shall at all times safely guard the City's property from injury or loss in connection with this Contract. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such is caused by errors contained in the Contract or by the City, or his duly authorized representative.

In case of an emergency that threatens loss or injury of property and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Engineer, in a diligent manner. He shall notify the Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Engineer for approval.

Where the Contractor has not taken action but has notified the Engineer of an emergency, he shall act as instructed or authorized by the Engineer. The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in paragraph GC-22 of these General Conditions.

GC-17 INSPECTION

It is agreed by the Contractor that the Engineer shall be and is hereby authorized to appoint from time to time such subordinate engineers, supervisors, or inspectors as the said Engineer may deem proper to inspect the material furnished and the work done under this Contract, and to see that the said materials is furnished, and said work is done in accordance with the specifications therefore. The Contractor shall furnish all reasonable aid and assistance required by the subordinate engineers, supervisors, or inspectors for the proper inspection and examination of the work. The Contractor shall regard and obey the directions and instructions of any subordinate engineers, supervisors, or inspectors so appointed, when such directions instructions are consistent with the obligations of this Contract and this Contract and the accompanying plans and specifications, provided, however, should the Contractor object to any order by any subordinate engineer, supervisor, or inspector, the Contractor may within six (6) days make written appeal to the Engineer for his decision.

GC-18 REPORTS, RECORDS AND DATA

The Contractor shall submit to the City such schedule of quantities and cost, progress schedules, payrolls, reports, estimates, records and other data as the City may request concerning work performed or to be performed under this Contract.

GC-19 SUPERINTENDENCE BY CONTRACTOR

The Contractor shall give personal attention to the faithful prosecution and completion of the Contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the City. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case.

GC-20 CHANGES IN WORK

No changes in the work covered by the approved Contract Document shall be made without having prior written approval of the City. Likewise, Contractor shall not be compensated for any changes unless said changes and the compensation therefore have been approved by City in advance. Charges for the work covered by the approved change shall be determined by one or more, or a combination of the following methods.

- A. Unit bid prices previously approved.
- B. An agreed lump sum.
- C. The actual cost of:
 - 1. Labor, including foreman.
 - 2. Materials entering permanently into the work.
 - 3. The ownership or rental cost of construction plant and equipment during the time of use on the extra work.
 - 4. Power and consumable supplies for the operation of power equipment.
 - 5. Insurance.
 - 6. Social Security and old age and unemployment taxes.

To the cost under GC-20 (c), there shall be added a fixed fee to be agreed upon but not to exceed twenty- five percent (25%) of the estimated cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit, and any other general expenses.

GC-21 EXTRAS

Without invalidating the Contract, the City may order extra work the kind bid upon or make changes by altering, adding to or deducting from the work, the Contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirably. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the City and the price is stated in the order.

No claim for extra work of any kind will be allowed unless ordered in writing and approved by the City. In case any orders or instructions, either oral or written, appear to the Contractor to involve extra work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the City for written orders authorizing such extra work. No extra work will be commenced until final written approval has been obtained.

GC-22 CLAIMS FOR EXTRA COST

No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Engineer approved by the City, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of paragraph GC-20(c) of these General Conditions, the Contractor shall furnish satisfactory bills, payrolls, and vouchers covering all items of cost and, when requested by the City, give the City access to accounts relating thereto.

GC-23 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and the Contractor and City, that the date of beginning and the time for completion as specified in the Contract of work to be done hereunder are ESSENTIAL CONDITIONS of this Contract. The Contractor agrees that said work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will insure full completion of the work within the time specified. It is expressly understood and agreed, by and between the Contractor and the City, that the time for completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. The following table shows the expected number adverse weather days based on average climactic conditions:

	Expected number of weather days*
January	18
February	18
March	10
April	5
May	6
June	6
July	5
August	4
September	3
October	3
November	9
December	19

*Note: Includes Holidays and Weekends

Example: contractor requesting 8 additional days to complete project due to weather in May – only 2 additional would be granted as 6 days in May were expected.

If the Contractor shall neglect, fail or refuse to complete the work within the time herein stipulated, or any proper extension thereof granted by the City, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the City the amount specified hereinafter, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work. For each calendar day, as specified, that any work shall remain uncompleted after the Contract time specified for the completion of the work provided for in the Contract, the sum specified in the following schedule will be deducted from any money due the Contractor: (unless otherwise noted in the bid proposal).

SCHEDULE OF LIQUIDATED DAMAGES

<u>ORIGINAL CONTRACT AMOUNT</u>		<u>AMOUNT OF LIQUIDATED DAMAGES PER CALENDAR DAY</u>
<u>FROM</u>	<u>TO</u>	
\$0	\$50,000	\$250.00
\$50,000	\$100,000	\$325.00
\$100,000	\$500,000	\$500.00
\$500,000	\$1,000,000	\$725.00
\$1,000,000	MORE	\$900.00

The said amount is fixed and agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages to the City would in such event sustain, and said amount is agreed to be a reasonable estimate of the amount of damages which the City would sustain and said amount shall be retained from time to time by the City.

It is further agreed that time is of the essence for each and every portion of this Contract and for the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where, under the Contract, an additional time is allowed for the completion of the work, the new time limit fixed by such extension shall be of the essence for this contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the City determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the City; provided further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- A. To any preference, priority, or allocation order duly issued by the City.
- B. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another Contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, freight embargoes, and severe weather.
- C. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections a and b of this article; provided further, that the Contractor shall, within ten (10) days from the beginning of such delay, notify the City, in writing, of the cause of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

GC-24 CORRECTION OF WORK

All work, all materials, whether incorporated in the work or not, all processes or manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and method of construction for the purposes for which they are used. Should they fail to meet his approval, they shall be forthwith reconstructed, made good, replaced, and/or corrected, as the case may be, by the Contractor at his own expense. Rejected materials shall immediately be removed from the site. If, in the opinion of the Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Engineer shall be equitable.

GC-25 LIEN WAIVER

The City or Belle Fourche may require Lien Waivers from the Contractor, all subcontractors, suppliers and materialmen before final payment is made to the Contractor.

GC-26 SUSPENSION OF WORK, TERMINATED, AND DELAY

The City may suspend the work or any portion thereof for a period of not more than ninety (90) days, by written notice to the Contractor. Which notice, shall fix the date on which work shall be resumed. The Contractor will resume work on the date so fixed unless otherwise agreed by the City. The Contractor will 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 is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to subcontractors, or for labor, materials, or equipment, or if he violates or disregards the law, ordinance, rule, regulation, or order of any public body having jurisdiction of the work, or if he disregards the authority of the Engineer, or if he otherwise violates any provision of the Contract Documents, then the City may, without prejudice to any other right or remedy and after giving the Contractor and his Surety a minimum of ten (10) days written notice, terminate the service of the Contractor and take possession of the project and of all materials, equipment, tool, construction equipment, and machinery thereon owned by the Contractor, and finish the work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the City. Such cost incurred by the City will be determined by the City and incorporated in a change order.

Where the Contractor's services have been so terminated by the City, said termination shall not affect any right of the City against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the City due the Contractor will not release the Contractor from compliance with the Contract Documents.

After ten (10) days from delivery of a written notice to the Contractor, the City may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the Contract. In such case, the Contractor shall be paid for all work executed and any expense incurred plus reasonable profit.

If, through no act or fault of the Contractor, the work is suspended for a period of more than ninety (90) days by the City, under an order of court or other public authority, or the City fails to act on any request for payment within thirty (30) days after it is submitted, or the City fails to pay the Contractor substantially the sum approved by the City or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a written notice to the City terminate the Contract and recover from the City payment for all work executed and all expenses incurred. In addition and in lieu of terminating the Contract, if the City has failed to act on a request for payment or if the City has failed to make any payment as aforesaid, the Contractor may, upon ten (10) days written notice to the City, stop the work until he has been paid all amounts then due, in which event and upon resumption of the work, change orders shall be issued for adjusting the Contract price extending the contract time or both to compensate for the costs and delays attributable to the stoppage of work.

If the performance of all or any portion of the work is suspended, delayed, or interrupted as a result of a failure of the City to act within the time specified in the Contract Documents, or if no time is specified, within a reasonable time, an adjustment in the contract price or an extension of the contract time, or both, shall be made by change order to compensate the Contractor for the costs and delays necessarily caused by the failure of the City.

GC-27 CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the City an estimated construction progress schedule in a form satisfactory to the Engineer, showing the proposed dates of commencement and completion of each of the various subdivisions of the work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms acceptable to the City (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic estimates of work done for the purpose of making up any of these schedules will be used only for determining the basis of partial payment and will not be considered as fixing a basis for additions to or deductions from the contract price.

GC-28 PAYMENT TO CONTRACTOR

Partial payments will be made once each month as the work progresses. Said payments will be based upon the estimates prepared by the Engineer of the value of the work performed and materials complete in place in accordance with the Contract and for materials delivered. No partial payment will be made when the total value of the work done since the last estimate amounts to less than \$1,000.00.

From the total of the amounts ascertained as payable an amount equivalent to ten percent (10%) of the amount of the Contract will be deducted and retained by the City until after completion of the entire Contract in an acceptable manner.

When the work under Contract has been completed and accepted and it is anticipated that preparation of the final estimate will not be completed within ninety (90) days or when the work has been substantially completed to the extent that only minor or incidental operations remain to fully complete all of the work under the Contract, and if the completion of such work is deferred or delayed in compliance with Contract provisions, or upon order of the City suspending operations by virtue of weather or climatic conditions, because of seasonal restrictions provided in the Contract ; upon written request of the Contractor and consent of the Surety, the City may prepare an estimate as figured from Contract unit prices.

There will be no payment, either partial or in full, for materials delivered to, or stockpiled on the project and not yet incorporated in the work in their final position, except as specified hereinafter.

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

No payment on stockpiled materials as specified herein shall be made on fuel, hardware such as bolts, plates, etc., supplies, form lumber, false work, perishable materials, or on temporary structures of any kind which will not become an integral part of the finished construction, nor on items when unit bid prices are obviously unbalanced as compared to the Engineer's estimated unit prices prepared prior to the letting. No payment shall be made on stockpiled materials until it has been tested and approved for use.

All materials for which stockpile payment is requested shall be stored in an approved manner in areas where damage from floodwaters is not likely to occur. If at any time stored materials are lost or become damaged by floods, or in any other manner, the Contractor will be responsible for repair and replacement of such damaged materials. If payment has been made prior to such damage, the amount so allowed, or a proportionate part thereof, shall be deducted from the next partial payment and withheld until satisfactory repairs or replacements have been made.

Progress payments for stockpiled materials will be made on the basis of the quantities by actual measurement as placed in storage in accordance with the stipulations in these specifications and percentages of contract unit prices listed.

GC-29 ACCEPTANCE OF FINAL PAYMENT AS RELEASE

The acceptance by the Contractor of final payment shall operate as a release to the City of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the City and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his Sureties from any obligation this Contract or the Performance and Payment Bond.

GC-30 PAYMENTS BY CONTRACTOR

The Contractor shall pay (a) for all transportation and utility services not later than the 20th day of the calendar month following that in which services are rendered, (b) for all materials, tools, and other expendable equipment to the extent of 90% of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tool, and equipment are incorporated or used, and (c) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors to the extent of each subcontractor's interest therein.

GC-31 INSURANCE

The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

- A. **Compensation Insurance:** The Contractor shall procure and shall maintain during the life of this Contract Workman's Compensation Insurance as required by applicable State law for all of his employees to be engaged in work at the site of the project under this Contract and in case of any such work sublet, the Contractor shall require the subcontractor's similarly to provide Workman's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workman's Compensation Insurance. In case any class employees engaged in hazardous work on the site under this Contract is not protected under the Workman's Compensation Insurance Statute, the Contract shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.
- B. **Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance:** The Contractor shall either (1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Information and Instructions to Bidders, or (2) insure the activities of his subcontractors in his policy, specified in subparagraph b hereof.
- C. **Scope of Insurance and Special Hazards:** The insurance required under subparagraph (B) and (C) hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this Contract as enumerated in Information to Bidders.
- D. **Proof of Carriage of Insurance:** The Contractor shall furnish the City with certificates showing the type, amount, class of operations covered, effective dates of expiration of policies. Such certificates shall also contain substantially the following statements: "The insurance covered by this certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the City of Belle Fourche".
- E. **Builder's Risk Insurance (Fire and Extended Coverage):** The Contractor shall procure and shall maintain during the life of this Contract Builder's Risk Insurance (Fire and Extended Coverage) on a 100 percent (100%) completed value basis on the insurable portion of the project. The City, the Contractor, and subcontractors (as their interest may appear) shall be named as the Insured.
- F. **"Claims Made" Coverage:** With respect to any of the insurance policies provided by the Contractor pursuant to this agreement which are "claims made" policies, in the event at any time any such policies are cancelled or not renewed, the Contractor shall provide a substitute insurance policy or policies with terms and conditions and in amounts which comply with the terms of the contract documents and which provide the retroactive coverage to the date of cancellation or non-renewal to fill any gaps in coverage which may exist due to cancellation or non-renewal of the prior "claims made" policies. With respect to all "claims made" policies which are renewed, the Contractor shall provide coverage retroactive to the date of commencement of work under this contract. All substitute or renewed "claims made" policies shall be maintained in full force and effect for one (1) year from the date of the completion of the project. Contractor shall provide a certificate of insurance for said replacement or substitute coverage to the Owner upon issuance.

GC-32 CONTRACT SECURITY

The Contractor shall furnish a performance bond in an amount at least equal to one hundred (100%) of the Contract price as security for the faithful performance of this Contract and also a Payment bond in an amount equal to one hundred (100%) of the Contract price or in a penal sum not less than that prescribed by State or local law, as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law. Before final acceptance, each bond must be approved by the City.

GC-33 ADDITIONAL OR SUBSTITUTE BOND

If at any time the City for justifiable cause, shall be or become dissatisfied with the Surety or Sureties for the Performance and/or Payments Bonds, the Contractor shall within (5) days after notice from the City to do so, substitute an acceptable bond in such form and sum and signed by such other Surety or Sureties as may be satisfactory to the City. The Contractor shall pay the premiums on such bond. No further payments shall be deemed due nor shall be made until the new Surety or Sureties shall have furnished such an acceptable bond to the City.

GC-34 ASSIGNMENTS

The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the City. In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.

GC-35 INDEMNIFICATION

The Contractor will indemnify and hold harmless the City and the Engineer and their agents and employees from and against all claims, damages, losses, and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claims, damages, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any act or omission of the Contractor, subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts.

The obligation of the Contractor under this paragraph shall not extend to the liability of the Engineer, his agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications.

GC-36 SEPARATE CONTRACTS

The Contractor shall coordinate his operations with those of other contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including his subcontractors, shall keep informed of the progress and the detailed work of other contractors and shall notify the City immediately of lack of progress or defective workmanship on the part of other contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

GC- 37 SUBCONTRACTING

The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors. The Contractor shall not award any work to any subcontractor without prior written approval of the City, which approval will not be given until the Contractor submits to the City a written statement concerning the proposed award to the subcontractor, which will contain such information as the City may require. The Contractor shall be as fully responsible to the City for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts

and omissions of persons directly employed by him. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractors by the terms of the General Conditions and other Contract Documents insofar as applicable to the work of subcontractors and to give the Contractors the same power as regards terminating any subcontract that the City may exercise over the Contractor under any provision of the Contract Documents. Nothing contained in this Contract shall create any contractual relation between any subcontractor and the City.

GC-38 ENGINEER'S AUTHORITY

The Engineer shall give all orders and directions contemplated under this Contract and specifications relative to the execution of the work. The engineer shall determine the amount, quality, acceptability and fitness of the several kinds of work and materials that are to be paid for under this Contract and shall decide all questions that may arise in relation to said work and the construction thereof. The Engineer's estimates and decisions shall be final and conclusive, exempt as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said Contract or specifications, the determination or decision of the Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this Contract affected in any manner or to any extent by such question.

GC-39 USE OF PREMISES AND REMOVAL OF DEBRIS

The Contractor expressly undertakes at his own expense:

- A. To take every precaution against injuries to persons or damage to property.
- B. To store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or of any other contractors.
- C. To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
- D. To clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance.
- E. Before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition.
- F. To effect all cutting, fitting, and patching of his work required to make the same to conform to the plans and specifications and, exempt with the consent of the Engineer, not to cut or otherwise alter the work of any other contractor.

GC-40 QUANTITIES OF ESTIMATE

Wherever the estimated quantities of work to be done and materials to be furnished on a unit price basis under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids, and the right is expressly reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonable necessary desirable by the City to complete the work contemplated by this Contract, and such increase or diminution shall in no way vitiate this Contract, nor shall increase or diminution give cause for claims or liability for damages.

GC-41 LAND AND RIGHTS-OF-WAY

Prior to start of construction, the City shall obtain all rights-of-way necessary for the carrying out and completion of work to be performed under this Contract.

GC-42 GENERAL GUARANTY

Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the City shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty

materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to the other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of work unless a longer period is specified. The City will give notice of observed defects with reasonable promptness.

GC-43 CONFLICTING CONDITIONS

Any provision in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be immediately brought to the attention of the Engineer, in writing, who shall then decide how to remedy such conflict or inconsistency.

GC-44 NOTICE AND SERVICE THEREOF

Any notice to any Contractor from the City relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, be certified or registered mail, to the said Contractor at his last given address, or delivered in person to said Contractor or his authorized representative on the work.

GC-45 REQUIRED PROVISIONS DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

GC-46 ARBITRATION

- A. Controversies and Claims Subject to Arbitration:** Any controversy or Claim arising out of or related to the Contract, or the breach thereof, may be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and except those waived as provided for in GC-29.
- B. Rules and Notices for Arbitration:** Claims between the City and Contractor not resolved under section D. shall, if subject to arbitration, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party to the Contract.
- C. Contract Performance During Arbitration:** During arbitration proceedings, the City and Contractor shall proceed diligently with performance and payment of the Contract unless otherwise agreed in writing.
- D. Mediation:** Prior to arbitration, and in an effort to resolve any conflicts that arise during the construction of the project or following the completion of the project, the Contractor, Subcontractors, City, Architects and other interested parties agree that all disputes between them arising out of or relating to the contract documents shall be submitted to non-binding mediation in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association unless the parties mutually agree otherwise. The parties further agree to include a similar mediation provision in all agreements with independent Contractors and consultants retained for the project and to require all independent Contractors or Subcontractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.
- E. Joinder and Consolidation:** This agreement to arbitrate shall include the obligation to include as part of any arbitration proceedings, by joinder or consolidation, all persons or entities not a party

to this agreement to the extent necessary for resolution of the matter in controversy. All contracts relating to this project shall include this provision as part of any agreement to arbitrate. The foregoing agreement to arbitrate, including the obligation to arbitrate with an additional person or entity by joinder or consolidation shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. Joinder or consolidation of necessary or interested parties shall be a condition precedent to the obligation to arbitrate. With respect to any dispute submitted to arbitration under this provision, the parties may invoke pretrial discovery pursuant to the Federal Rules of Civil Procedure for a period of sixty (60) days from the date of filing the claim in arbitration or the date from the joinder or consolidation of all other parties, whichever date is later.

- F. Claims and Timely Assertion of Claims:** A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.
- G. Judgment on Final Award:** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- H. Cost of Arbitration:** The parties shall share the cost of arbitration, exclusive of the cost of the parties' representatives and witnesses.

GC-47 TAXES

The Contractor will pay all sales, excise, use, and other taxes required by the law of the jurisdiction where the work is performed.

GC-48 UNBALANCED BIDS

If, in the opinion of the City and Engineer, a bidder submits a bid for any unit price item which is a deliberate attempt to take unfair advantage of any incorrect estimates of bid quantities shown in the Bid Schedule, the City may elect to reject the bid on that basis. Regardless of whether the unbalancing of unit bid prices affects the relative position of a bidder with respect to competing bidders in final comparison bids, the City reserves the right to reject any unbalanced bid.

GC- 49 PAYMENT REQUIREMENT - SDCL 61-5-15

The Contractor shall pay the Unemployment Compensation Fund of the State of South Dakota all contributions and interest due under the provisions of SDCL Title 61, on wages paid to individuals employed in performance of said contract.

GC-50 IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

By signing this Contract, the Contractor will be deemed to have stipulated the following:

- A.** That any facility to be utilized in the performance of this Contract, unless such Contract is exempt under the Clean air act, as amended, (42 USC 1857 et seq., as amended by Pub. L, 91-604), and under the federal Water Pollution Control Act, as amended (33 USC 1251 et seq., as amended by Pub. L 92-500), Execution Order 11738, and regulations in implementation thereof, (40CFR, Part 15), is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- B.** That the City of Belle Fourche, South Dakota, shall be promptly notified Contract Award of the receipt by the Contractor of any communication from the Environmental Protection Agency, including that a facility to be utilized for this Contract is under consideration to be listed on the EPA List of Violating Facilities.

SPECIAL PROVISIONS FOR ASPHALT CRACK SEALING

I. Description of Work

Asphalt crack sealing shall consist of routing and sealing transverse and longitudinal cracks in asphalt roadway surfaces with the specified sealant.

II. Materials

The sealant shall conform to the requirements of ASTM D-3405 with the following modifications:

Penetration at 77 degrees F 90-150

Bond at -20 degrees F, Std. Specimen,
3 cycles, 200% Extension..... Passes

Only Crafc0 231 or Meadows softseal, or an approved equal shall be accepted. A certificate of compliance shall be furnished prior to construction.

The blocking medium shall be an inert, compressible material which is compatible with the sealant.

III. Construction Requirements

A. Routing

1. Routing equipment shall be mechanical, power driven and capable of cutting a reservoir to the required dimensions. Equipment designed to plow the cracks to dimensions will not be permitted.
2. Cracks which are less than 3/4" in width or depth will require routing to a minimum width and depth of 3/4".
3. Cracks which are 3/4 inch or greater in width and depth will not require routing, but shall be thoroughly cleaned of foreign material to a depth equal to the width of the crack.
4. The walls of the finished reservoir shall be vertical and the reservoir bottom shall be flat.
5. Routing will not be allowed when the roadway is wet.

B. Cleaning

1. Cleaning shall be accomplished with an air compressor producing a minimum of 125 CFM output and equipped with a maximum 3/4" nozzle.
2. Reservoirs and cracks shall be thoroughly cleaned of dust, dirt and loose materials so that it is clean and dry at the time the blocking medium or sealant is applied.
3. If a routed reservoir or crack is left overnight, it shall be recleaned immediately before the blocking medium or sealant is applied.
4. The routed asphalt concrete and foreign material resulting from the reservoir preparation shall be removed from the roadway to the gutters. After material is moved to the gutters, City brooms will pick up the material on City Schedule work time. Sidewalks and driveways shall be cleaned by the Contractor to remove construction debris.

C. Sealing

1. Cracks 3/8" or more in width which exist below the routed and cleaned reservoir shall be filled with a blocking medium to insure a nominal sealant depth equal to the width of the reservoir.
2. Sealant material shall be placed within 72 hours of routing.
3. There shall be no visible signs of moisture on the roadway surface or in the reservoir at the time the sealant is applied.
4. The sealant manufacturer's recommended handling, mixing and application temperature restrictions shall be strictly adhered to.
5. Sealant shall be applied with a pressure type applicator.
6. When applying the sealant, the reservoir shall be overfilled and squeegeed to provide a film of sealant on the roadway surface 1 to 3 inches on both sides of the reservoir.
7. The squeegee shall be a "U" shaped device which will produce a full, uniform and neat appearing reservoir and adjoining surface area. Other type devices will require prior approval by the Engineer.
8. Traffic shall not be allowed on newly placed sealant until it will no longer track or pick up or until 1 ply paper tissue covers the sealant. 10% of the project

amount will be retained until portions of joint sealant which have been pulled out under traffic conditions have been refilled.

9. The contractor shall repair or refill, at his own expense, any part of a sealed reservoir damaged by traffic.

D. Seasonal and Temperature Limitations

1. Routing and sealing of asphalt surfaces will be permitted only during daylight hours between April 15 and October 15.
2. Routing with a star bit type router will not be allowed when the air temperature is below 55 degrees F.
3. Application of the sealant material will not be allowed when the air temperature is below 45 degrees F.

E. General

1. Traffic shall be controlled so that cars will not be hit by flying debris during routing or cleaning.
2. Class I cracks will be cracks that are less than 1" wide before routing.
Class II cracks will be cracks that are 1" to 3" wide before routing.

IV. Method of Measurement

Crack sealing of asphalt surfaces will be measured to the nearest linear foot.

V. Method of Payment

Crack sealing of asphalt surfaces will be paid for at the contract unit price per linear foot for each class of crack.

Payment shall be full compensation for labor, equipment, materials and incidentals required for crack routing, cleaning, furnishing and placing sealant, removing routed and foreign material from roadway, and traffic control.