

**STANDARD CONSTRUCTION SPECIFICATIONS  
DIVISION I  
GENERAL REQUIREMENTS**

**101 DEFINITIONS AND ABBREVIATIONS**

Unless otherwise defined in the Contract Documents, the following definitions and abbreviations shall apply whenever used.

The words directed, required, permitted, ordered, requested, constructed, designated, considered, necessary, prescribed, approved, acceptable, satisfactory, or words of like import, refer to actions, expressions and prerogatives of the Engineer.

101.01 Definitions

Acceptance of Work

All work required by the Contract Documents will be considered accepted upon official action by the City Council of the City of Springfield. In order to qualify for acceptance, all work specified in the Contract Documents must be completed unless specifically deleted by Contract change orders.

Acts of God

An act of God is to be construed to mean an earthquake, flood, cloudburst, tornado, hurricane or other phenomenon of nature of catastrophic proportions or intensity.

Addenda

Supplemental written Specifications or Drawings issued prior to execution of the Contract which modify or interpret the Contract Documents by addition, deletion, clarification or correction.

Advertisement

The public announcement inviting bids for work to be performed or materials to be furnished.

### Approved Equal

A product, component or process whose use in or on a particular project is specified as a standard for comparison purposes only. The "equal" product, component, or process, shall be the same or better than that named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer, pursuant to Subsection 106.07. Whenever a manufacturer's name brand or model is mentioned, it is to be understood that the phrase "approved equal" is assumed to follow thereafter, whether it does in fact or not.

### Attorney

The City Attorney of the City of Springfield, Oregon.

### Bid Bond

The bond required to be submitted with each Proposal, as described in Subsection 102.05 as a Proposal Guaranty, which assures that the Bidder will enter into a Contract if his Proposal is accepted.

### Bidder

Any individual, firm, co-partnership, corporation, or combination thereof, submitting a Proposal in response to the advertisement calling for Bids on the work contemplated either directly or through a duly authorized representative.

### Change Order

A written order, issued by Engineer to the Contractor, covering changes in either the Plans, Specifications or quantities within the scope of the Contract after award and as further described in Subsections 104.05 and 104.06.

### City

The City of Springfield, Lane County, Oregon, acting through its legally constituted City Council.

### Contract

The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment and construction of the work. The Contract shall include the Proposal, Plans, Standard Specifications, Special Provisions and Contract Bond; also any and all supplemental agreements amending or extending the work completed which may be required to complete the work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations or amendments or extensions to the Contract and include Contract change orders. These general conditions are an integral part thereof.

### Contract Item

A specific unit of work for which a price or basis of payment is provided in the Contract.

### Contract Price

Either the unit prices or lump sum price or prices named in the Proposal or in properly executed change orders.

### Contract Review Board

The City of Springfield Common Council is the Contract Review Board pursuant to ORS 279.055 and Chapter 1, Article 14, Section 1 of the Springfield Code.

### Contract Time

The number of days stated in the Contract Documents for the completion of the work.

### Contractor

Any individual, firm, co-partnership, corporation or any combination thereof, who has or have entered into a Contract with the City for a particular project.

### Day

Unless otherwise designated, days as used in these specifications will be understood to mean working days. A working day is any and every day shown on the calendar, excluding Saturdays, Sundays and legal holidays.

### Department of Public Works

The Department of Public Works of the City of Springfield, Oregon, acting directly or through properly authorized officials, employees and agents limited to the particular duties entrusted to them.

### Easements

The right to use the property of another for a specific purpose or purposes as set forth in a document.

### Engineer

The City Engineer, Transportation Manager, or any authorized consultant who represents the Owner, under whose direction the work will be performed, acting directly or through properly authorized officials, employees and agents limited to the particular duties entrusted to them.

### Equipment

The machinery, accessories, appurtenances, and manufactured articles to be furnished and/or installed under the Contract.

### Improvement

General term encompassing all phases of work to be performed under the Contract and is synonymous to the term project.

### Inspector

The authorized representative of the Engineer whose instructions and decisions shall be limited to the particular duties and responsibilities intrusted to him and making detailed inspections of any or all portions of the work or materials therefor.

### Lump Sum

A method of payment providing for one all-inclusive payment for the work described to be done, complete and accepted without further measurement, as such work is covered under the applicable lump sum pay item.

### Notice

A written communication delivered by hand or by mail to the authorized individual, member of the firm, or officer of the corporation for which it is intended. If delivered or sent by mail, it shall be addressed to the last known business address of the individual firm or corporation. In the case of a Contract with two or more persons, firms, or corporations, notice to one shall be deemed notice to all.

### OSHD Standard Specifications

The latest addition of the Specification Document published by the State of Oregon entitled Standard Specifications for Highway Construction - Oregon State Highway

Division. This document is available from the Oregon State Highway Division, Salem, Oregon.

### Owner

The City of Springfield, Lane County, Oregon, acting through its legally constituted City Council.

### Pavement

The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

### Performance Bond and Payment Bond

The Bonds submitted by the Contractor and his surety, as specified in the Contract and as more fully described in Subsection 103.06.

### Plans

The official project Plans and Standard Plans, profiles, cross-sections, elevations, details and other working supplementary detail drawings or reproductions thereof approved by the Engineer which show the location, character, dimensions, and details of the work to be performed. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets and all are a part of the Contract Documents regardless of the method of binding.

In the above definitions, the following terms are defined:

- A) Standard Plans - the Standard Plans of the City of Springfield, Oregon.
- B) Project Plans - the Project Plans are specific details and dimensions peculiar to the work and are supplemented by the Standard Plans insofar as the same may apply.

### Pre-qualification

Process for pre-screening Contractors to assure that they have the ability to perform certain types of work pursuant to ORS 279.

### Project

General term encompassing all Phases of the Work to be performed under the Contract and is synonymous to the term improvement.

### Proposal

The offer of a Bidder, which is the basis of the Contract submitted on Owner's official

Proposal form, to perform stated work at the prices quoted.

#### Proposal Guaranty (Bid Bond)

The security furnished with a Proposal to ensure that the Bidder will enter into the Contract if his Proposal is accepted.

#### Provide

When related to an item of work, the word 'provide' shall be understood to mean furnish and install the work complete in place.

#### Reference Specifications

Bulletins, standards, rules, methods of analysis or test, codes and specifications of other agencies, engineering societies or industrial associations referred to in the Contract Documents. All such references specified herein refer to the latest edition thereof, including any amendments thereto which are in effect and published at the time of advertising for Bids, or of issuing the permit for the project.

#### Right-of-Way

A general term denoting public land, property or interest therein acquired for or devoted to a public street, public access or public use.

#### Roadway

That portion of the street and its appurtenances between curbs, gutters, or ditches primarily used for vehicular traffic.

#### Scheduled Closing Time

The time and date as set forth in the Request for Bids or any extensions thereof provided by addenda.

#### Shop Drawings

Supplementary plans or data which the Contract requires the Contractor to submit to the Engineer, including, but not limited to, steel bending details, erection plans, cofferdam plans and catalog data explaining equipment proposed for use.

#### Shown

As used herein, the word shown, or as shown, shall be understood to refer to work shown on the Plans in the Contract Documents.

#### Special Provisions

Requirements peculiar to the project and changes and modifications to the Standard Specifications.

### Specified

As used herein, the word specified or as specified means as required by the Contract Documents.

### Standard Plans or Drawings

Details of structures, devices or instructions adopted by City as a standard and referred to in the Contract Documents.

### Standard Specifications

The terms, directions, provisions and requirements set forth herein.

### Station

A distance of 100 feet measured horizontally along the established centerline of the street, sewer or other work, unless specified otherwise.

### Street

Any street, avenue, boulevard, alley, lane, bridge, bicycle path, road, public thoroughfare or public way and any land over which a right-of-way has been obtained or granted for the purpose of public travel.

### Subcontractor

An individual, partnership, firm, corporation or any combination thereof to whom the Contractor sublets part of the Contract.

### Surety

Any firm or corporation executing a surety bond or bonds payable to the City securing the performance of the Contract either in whole or in part.

### Ton

A short ton of 2000 lbs. avoirdupois.

### Unit Price

A Contract item of work providing for payment based on an existing unit of measurement; e.g. linear foot or cubic yard.

### Use of Pronoun

As used herein, the singular shall include the plural, and the plural the singular; any masculine pronoun shall include the feminine or neuter gender; and the term 'person' includes natural person or persons, firms, co-partnerships, corporations, or associations or

combinations thereof.

### Utility

Tracks, overhead or underground wires, pipelines, conduits, ducts, or structures owned, operated or maintained in or across the public right-of-way or easement.

### Work

All material, labor, tools, equipment and all appliances, machinery, transportation or appurtenances necessary to perform and complete the Contract and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete and satisfactory system or structure.

### 101.02 ABBREVIATIONS

AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGA	American Gas Association
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APWA	American Public Works Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforced Steel Institute

DEQ	Department of Environmental Quality
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration
ITE	Institute of Traffic Engineers
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NLMA	National Lumber Manufacturer's Association
OAPD	Oregon Accident Prevention Division
ORS	Oregon Revised Statutes
OSHA	Occupational Safety and Health Administration
OSHD	Oregon State Highway Division
PCA	Portland Cement Association
UBC	Uniform Building Code
UL	Underwriter's Laboratories, Inc.
UMC	Uniform Mechanical Code w/Oregon Amendments
UPC	Uniform Plumbing Code w/Oregon Amendments
USASI	United States of America Standards Institute
WWPA	Western Wood Products Association

## **102 PROPOSAL REQUIREMENTS**

### **102.01 Pre-qualification of Bidders**

If pre-qualification is required for any improvement project bid, the requirement for pre-qualification will be specified in the Invitation to Bid. Attention of Bidders is called to the requirements of Oregon Revised Statutes Chapter 279 relating to Pre-qualification of Bidders on Public Contracts and to the requirements of the City of Springfield City Code Chapter 1-14-7.

### **102.02 Form of Proposal**

The Proposal and the proposal guarantee in the form of a bid bond, certified check, or cashiers check, shall be enclosed in a sealed, labeled and addressed envelope, as required in the Instructions to Bidders and filed as required therein. The outside of the envelope shall plainly identify: (1) The project name and (2) The bid opening date.

All Proposals must be clearly and distinctly typed or written with ink or indelible pencil.

All Proposals shall be on the form furnished by Owner, and in addition to necessary unit price items and total prices in the column of totals to make a complete Bid, all applicable blanks giving general information must be filled in and the Bids signed by an officer or duly authorized representative of the Bidder. Any statement accompanying and tending to qualify a Bid may cause rejection of such Bid, unless such statement is required, in a Proposal embracing alternate Bids. All bid documents except plans must be returned with the Bid.

Unless otherwise specified, Bidders shall bid on all Bid items included in the Proposal, and the low Bidder shall be determined as noted in Subsection 103.01 AWARD OF CONTRACT. Except as provided herein Proposals which are incomplete or fail to comply to all items required in the Proposal may be rejected.

### **102.03 Withdrawal, Modification, or Alteration of Proposal**

A Proposal may be withdrawn on written or telegraphic request of the Bidder prior to the scheduled closing time for filing Bids. No Bidder may withdraw a Proposal after the scheduled closing time for filing Bids. This includes negligence on the part of the Bidder in preparing his Proposal.

Prior to Bid Opening, changes may be made provided the changes are initialed by the Bidder or his agent. If the intent of the Bidder is not clearly identifiable, the interpretation most advantageous to the City will prevail.

#### 102.04 Late Proposals

Proposals received after the scheduled closing time for filing bids as set forth in the Invitation to Bidders will be rejected and returned unopened to the bidder, unless such closing time is extended by the City.

#### 102.05 Proposal Guaranty and Organization

Each Bid must be accompanied by a Bid Bond, cash or a certified or cashier's check upon a bank in good standing, payable to the Finance Director of the City of Springfield, Oregon, in an amount equal to at least 10% of the total amount of the bid. Such Proposal guaranty shall be forfeited and become the property of the City in case the Bidder shall fail or neglect to furnish a satisfactory Performance Bond and Payment Bond and to execute the Contract within 10 days (Saturday, Sunday and holidays excepted) after receiving said Contract from the City for execution. Bid bonds submitted shall be on the form provided by the City in the Bid document.

#### 102.06 Examination of Contract Documents and Site of Work

Bidders shall determine for themselves all the conditions and circumstances affecting the project or the cost of the proposed work by personal examination of the site, Contract Documents, and by such other means as they may choose. It is understood and agreed that information regarding underground or other conditions or obstructions indicated in the Contract Documents, has been obtained by Owner from data at hand. There is no expressed or implied agreement that such conditions are fully or correctly shown, and the Bidder must take into consideration the possibility that conditions affecting the cost or quantity of work may differ from those indicated.

Refer to Subsections 104.06 and 105.05 for additional provisions relative to site conditions.

#### 102.07 Interpretation of Contract Documents

If it should appear to a Bidder that the work to be done, or matters relative thereto, is not sufficiently described or explained in the Contract Documents, or that Contract Documents are not definite and clear, the Bidder may make written inquiry regarding same to the Engineer at least 5 days before the scheduled closing time for filing Bids. Requests to clarify the source of materials, equipment suppliers, or any other such matter which does not modify, change, increase, or decrease the scope of the work require no action by the Owner other than a response to the Bidder requesting the clarification. Clarifications which modify, change, increase, or decrease the scope of work, require issuance of an Addendum by the Owner for the interpretation to become effective. Such

addenda will be mailed to all known holders of the Contract Documents. Such addendum shall have the same binding effect as though contained in the main body of the Contract Documents. Oral instructions or information concerning the Contract Documents or the project given out by officers, employees, or agents of the Owner to prospective Bidders shall not bind the Owner.

#### 102.08 Addenda to Contract Documents

Any addenda issued by the Owner, which may include changes, corrections, additions, interpretations, or information, and issued 48 hours or more before the scheduled closing time for filing the Bids, Saturday, Sunday and legal holidays not included, shall be binding upon the Bidder. Owner shall supply copies of such addenda to all Contractors who have obtained copies of the Contract Documents for the purposes of bidding thereon. Failure of the Contractor to receive or obtain such addenda shall not excuse him from compliance therewith, if he is awarded the Contract.

#### 102.09 Familiarity with Laws and Ordinances

The Bidder is presumed to be familiar with Federal, State, and local laws, ordinances, regulation, orders and decrees, which in any manner affect those engaged or employed in the work or the materials or the equipment used in the proposed construction, or which may in any way affect the conduct of the work, or the health and safety of the public and no plea of misunderstanding will be considered due to ignorance thereof. If the Bidder or Contractor shall discover any provision in the Contract Documents which is contrary to, or inconsistent with, any law, ordinance, or regulation, it shall be immediately reported to the Owner in writing.

The Contractor, subcontractor, suppliers of materials or services, and others engaged by the contractors, shall comply at all times with and observe all such laws, ordinances, regulations, orders, and decrees; and shall hold harmless and indemnify the City of Springfield and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree.

In compliance with ORS 279.318 the Contractor is made aware that the following Federal, State, and local agencies have enacted ordinances or regulations relating to the prevention of environmental pollution or the preservation of natural resources which may affect performance of City of Springfield contracts.

FEDERAL AGENCIES

Department of Agriculture  
Forest Service  
Soil Conservation Service  
Department of the Army -  
    Corps of Engineers  
Coast Guard  
Dept. of Health & Human Services  
Dept. of Interior -  
of Indian Affairs  
Bureau of Land Management  
Bureau of Outdoor Recreation  
Fish and Wildlife Service  
Office of Surface Mining  
Reclamation & Enforcement  
Bureau of Reclamation  
Department of Labor  
Occupational Safety &  
Health Administration  
Mine Safety & Health Admin.  
Department of Transportation  
Federal Highway Admin.  
Environmental Protection Agency

STATE AGENCIES

Department of Agriculture  
Department of Energy  
Dept. of Environmental Quality  
Dept. of Fish & Wildlife  
Dept. of Forestry  
Dept. of Geology & Minerals  
Dept. of Human Resources  
Land Conservation and Development Bureau  
    Commission  
Division of State Lands  
State Soil and Water Conservation  
    Commission  
Water Resources Department

LOCAL AGENCIES

Common Council, City of Springfield  
County Court, Lane County  
Planning Commission, City of  
    Springfield  
Planning Commission, Lane County  
Lane Regional Air Pollution Authority  
Springfield Utility Board

102.10 Amount of Work to be Done

Owner reserves the right to increase or decrease the amount of any class or portion of the work. No such change in the work shall be considered as a waiver of any condition of the Contract, nor shall such change invalidate any of the provisions thereof.

The estimate of quantities of work to be done under unit price Bids is approximate, and is given only as the basis of calculation for comparison of Bids and award of the Contract. The Owner does not by implication agree that the actual amount of work will correspond precisely to the amount as shown or estimated. Payment will be made at unit prices under a Contract only for work actually performed or materials actually furnished according to actual measurements.

102.11 Bid Prices to Cover the Entire Work

Bidders must include in their Bid prices the entire cost of each item of work set forth in the Proposal, and when, in the opinion of the Owner, the prices in any Proposal are obviously unbalanced, such Proposals may be rejected.

### 102.12 Subcontracts

The Contractor shall not subcontract to any one subcontractor a larger percentage of the work than the Contractor performs through the Contractor's employees. The Contractor shall perform at least 40 percent of the work through the Contractor's employees.

### 102.13 Rejection of Proposals

The Owner reserves the right to reject any or all bids in whole or in part or waive irregularities not affecting substantial rights.

Per ORS 279.037 (1)(a)-(d) and (2), the Owner may reject a bid if the City finds: (i) bidder does not have sufficient financial ability to perform the contract; (ii) bidder does not have equipment available to perform the Contract; (iii) bidder does not have key personnel available of sufficient experience to perform the contract; (iv) or bidder has repeatedly breached contractual obligations to public and private contracting agencies.

The Owner may make such investigation as is necessary to determine whether a bidder is qualified. If a bidder fails to supply prompt information as requested by Owner pursuant to such investigation, such failure is grounds for disqualification.

The Owner may reject any bid not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any or all bids on a finding of Owner that it is in the public interest to do so (ORS 279.025(2)(i)).

No bid for a construction contract shall be received or considered by Owner unless the bidder is registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530 (ORS 279.025(2)(k)).

General or evasive replies will be considered grounds for rejection of the Bid as incomplete. The successful Bidder may be required to appear before the City Council and submit satisfactory evidence that he has the necessary capital and is qualified and prepared to prosecute the work to the full satisfaction of the Engineer.

## **103 AWARD AND EXECUTION OF CONTRACT**

### **103.01 Award of Contract**

The award will be made by Owner to the Bidder submitting the lowest acceptable Bid. In determining the lowest acceptable Bid, Owner may take into account, among other factors, the prices bid, discounts if any, time of completion and delivery proposed, as between equal Bids, the relative merits and performance of any items specifically proposed by the Bidder, any variation in maintenance and guarantee periods specifically proposed by the Bidder in excess of any minimum specified, the realistic balance of prices in the Proposals for various parts or units of work, and the experience and ability of Bidder to perform the work.

In accordance with ORS 279.025, the City of Springfield will require that each bid must contain a Statement as to whether the bidder is a resident bidder, as defined in ORS 279.029. Preference will be given to resident bidders where required by law.

While price extensions are required as a matter of convenience, in the event of error in extensions, the unit price of Bid shall govern.

Between the time of the opening of the Bid Proposal and the award of the Contract, the low Bidder may discuss with the City Engineer any problems pertinent to the Contract and point out anything which is not clear to him or which can be considered as conflicting requirements of one document or another. At this meeting every effort shall be made to reach a complete understanding of the requirements of the Contractual Documents between the Engineer and the Contractor. The award will be made by the City Council in conformity with the City Charter.

Award and tender of Contract, or the rejection of all bids shall be made within 45 calendar days after the date of opening Bids.

### **103.02 Execution of Contract**

The Bidder to whom the Contract is awarded shall, within ten days from the date of receipt, deliver to the Owner the fully executed Contract along with required insurance certificates (See Section 107.06) and performance and payment bonds (See Section 103.06). The Owner will execute the Contract within ten business days of its receipt of the Contract and forward a copy to the Contractor.

### 103.03 Failure to Execute Contract

Failure on the part of the Bidder to execute the Contract in accordance with subsection 103.02 will be just cause for cancellation of the award and forfeiture of the proposal guaranty. The forfeited proposal guaranty shall become the property of the Owner as liquidation of damages sustained by the breach of contract by the Bidder. The Owner may then award the Contract to the next lowest acceptable bidder, re-advertise the work, or take such other course the Owner deems expedient.

### 103.04 Return of Proposal Guaranty

The return of all proposal guaranties will be in accordance with ORS 279.031.

### 103.05 Transfer of Contract and Interests Therein

Contractor shall not transfer the Contract or any interest therein to any other party or parties without the prior written consent of Owner. In case of such attempted transfer without permission, Owner may refuse to carry out the Contract either with the transferor or the transferee, but all rights of action for any breach of the Contract by said Contractor are reserved to the Owner. No officer of Owner, or any person employed in its service is or shall be permitted any share or part of the Contract or is or shall be entitled to any benefit which may arise therefrom. Contractor shall not assign any of the monies payable under the Contract or claims thereto without the prior written approval of Owner.

Any assignment of money shall be subject to all proper setoffs and withholdings in favor of Owner and to all deductions provided for in the Contract, and particularly all money withheld, whether assigned or not, shall be subject to being used by Owner for completion of the work in the event Contractor should be in default therein.

### 103.06 Performance Bond and Payment Bond

At the time of execution of the Contract, Contractor shall furnish both a Performance Bond and Payment Bond, each in the amount equal to 100 percent of the Contract price. The bonds will be in a form and from a company acceptable to Owner's Risk Manager. If the Contract is an estimate or if there are change orders, the bonds will be adjusted to equal 100 percent of the final Contract price. The bonds will guarantee compliance with and fulfillment of all terms and provisions of the Contract including maintenance, repair and replacement, and all applicable laws, and prompt payment as due, to all persons supplying labor and/or material for prosecution of the work and in accordance with subsection 108.14.

#### 103.07 Proof of Insurance

Work shall not commence until all insurance required in the Contract (as specified in section 107.05) has been obtained. A certificate of insurance evidencing all coverage shall be delivered to Owner prior to the start of any work. The form of the certificate and issuing company must be approved by Owner's Risk Manager. Insurance shall be maintained throughout the life of the Contract which will hold Owner harmless and shall indemnify Owner for any and all losses to third persons or to Owner arising out of the operations, including any contingent liability arising therefrom.

#### 103.08 Notice to Proceed

After the Contract has been executed and the performance and payment bonds and all required insurance certificates have been received and approved by the Owner, the Engineer will issue a written Notice to Proceed.

## **104 SCOPE OF WORK**

### **104.01 Plans and Specifications**

Plans, Specifications and other Contract Documents will govern the work to be done. Anything mentioned in the Specifications and not shown on the Plans and detailed drawings, or anything shown on the Plans and not mentioned in the Specifications, shall be of like effect as though shown or mentioned in both. Specifications and Plans referred to in any of the Contract Documents shall be considered as being included in the document in which such reference is made. A reference to a particular Specification or Standard Plan in a Contract Document shall exclude any earlier or later modification thereof. When a particular Standard or Specification is referred to, such reference shall be to the Standard or Specification including officially adopted revisions or amendments thereto which are in force at the time of advertising for Bids.

### **104.02 Precedence of Contract Documents**

The Contract shall be composed of each and every one of the following listed component parts and all approved revisions thereto:

1. Change Orders
2. Addenda to the Special Provisions
3. Special Provisions
4. Addenda to General Conditions and Standard Specifications
5. General Conditions and Standard Specifications
6. Contract Plans
7. Standard Drawings
8. Instructions to Bidders
9. Proposal

### **104.03 Conflict of Provisions**

In the event of any conflicting provisions or requirements between the component parts of this Contract, the component part having the lowest number, as established in Subsection 104.02 above, shall govern.

This shall in no way relieve the performance bond and public liability insurance of their respective and specific protection to the Contractor, provided, however, that such sequence control does not conflict with the intent of or harm the product in any way. In case of such conflict which would alter the intent of or harm the product, the requirement which, in the opinion of the Engineer, will result in the best product will govern. It is hereby agreed that the entire project shall be completed in accordance with the full intent of the Contract, regardless of conflicting statements, omissions, or errors. The intent of the drawings and Specifications is to outline and control the work in a manner necessary to result in the best completely finished product practicable, at a minimum cost, incorporating all items. Any omissions in the Plans and Specifications pertinent to the

requirements of the specified items are unintentional. If such are found, the Contractor will be required to perform the work in a customary workmanlike manner to achieve the intent as stated above, and the Engineer will make his decisions to be equitable to all concerned. To accomplish this, the Contractor will be required to maintain adequate competent supervisory personnel on the project at all times, to be responsible for all work being done in accordance with the intent of the Plans and Specifications, whether or not the Engineer is, or is not, present. Should the Engineer or his authorized representative find faulty work on any item at any time in the Contract, he shall so inform the Contractor and the Contractor will be required to correct such work by completely removing and replacing, if necessary, all to the satisfaction of the Engineer, and at no cost to the Owner.

It shall be definitely understood that omissions of one or more of the Documents shall not be construed as conflicting provisions. Any requirement given in one Document shall be known to be binding as though it is repeated in all Documents alike. The intent of the Contract is to combine all requirements of all Documents into one.

#### 104.04 Shop Drawings

Plans furnished and included with Specifications show details necessary to comprehensively indicate the work proposed and the results that are intended to be accomplished. The Contractor shall supply and bear the cost of any shop drawing required in connection with the prosecution or construction of any part of such work.

The Contractor shall furnish the specified number of copies of all layout detail, shop and working drawings, requested by the Engineer. Shop drawings shall be of sufficient size and scale to clearly show details. After review and approval by the Engineer, two copies will be returned to the Contractor.

The approval by the Engineer of the Contractor's shop drawings is a general approval relating only to compliance with the intent of the Contract Documents, and shall not constitute a waiver of errors or omissions.

No materials shall be furnished or work done on items requiring shop drawings prior to approval of those drawings.

#### 104.05 Changes in the Work

The Engineer may at any time, by written order, make changes in the Plans and/or Specifications and within the general scope thereof. These changes may be in the Contract or result in addition to or deduction from the work to be performed, or the materials to be furnished pursuant to the Contract. Estimated quantities in the Proposal are primarily for bid purposes. No employee, agent, or representative of the City, with the exception of the Engineer, has any power to approve any change in the Contract, and it is the responsibility of the Contractor, before proceeding with any change, to satisfy himself that the change has been

properly authorized by the Engineer. No change for any extra work, or any other change in the Contract, will be allowed unless the extra work or change has been authorized in writing by the Engineer and the price, therefore, is stated in such a written authority, provided however, that the Engineer may, in the case of an emergency, authorize changes in the field. In no case shall any payment be made without first the written change order being agreed to and signed by both the Contractor and the Engineer. Nothing provided herein shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise herein provided, no charge for extra work or materials will be allowed.

The estimate of quantities of work to be done is tabulated in the Proposal and, although stated with as much accuracy as possible, is approximate only and is assumed solely for the basis of calculation upon which the award of Contract shall be made. Payment to the Contractor will be made on the measurement of the work actually performed by the Contractor as specified in the Contract Documents. The Owner reserves the right to increase or diminish the amount of any class of work as may be deemed necessary.

If the actual quantity of any unit item as stated in the Proposal increases or decreases by 25 percent or less, payment for the actual quantity shall be made at the unit price stated in the Proposal. If the actual quantity of any unit item is less than 75 percent of the quantity stated in the Proposal, the Contractor may request, with appropriate documentation, a negotiation of the unit price for that item. Such negotiation shall be at the sole discretion of the Owner. If the actual quantity of any unit item is more than 125 percent of the quantity stated in the Proposal, the Owner may require an equitable reduction of the unit price for that item and the Contract shall be modified accordingly.

#### 104.06 Changed Conditions

The Contractor shall notify the Engineer of changed work site conditions upon their discovery and before they are disturbed. If the Engineer is not given written notice, the Contractor will be deemed to have waived any claim or claims for extra compensation in any manner arising out of the changed or unusual conditions. Changed conditions are as follows:

- a) Subsurface or latent physical conditions differing materially from those represented in the contract; or,
- b) Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work.

The Engineer will promptly investigate all changed conditions. If the Engineer determines that the changed conditions will materially increase or decrease the costs of any portion of the work, the Engineer will make an equitable adjustment in the amount of compensation to be paid for the performance of that part of the work involved, the time required, or both. If the Engineer determines that the changed conditions do not justify an adjustment in compensation, and the contractor disagrees with the engineer's determination, the contractor may submit a written notice of dispute to the engineer.

In any event, the Contractor shall not be relieved from his obligations to resume construction operations pending a decision as to the validity of a claim, or pending the execution of negotiated agreement to cover additional costs of a claim recognized under the provisions of this section, unless permitted to do so by Owner.

#### 104.07 Disputed Work

If the Contractor considers that a part of the required work is outside the scope of the Contract or considers any ruling of the Engineer to be unfair, the contractor shall:

- a) immediately give oral notice to the Engineer;
- b) before performing the work, obtain a written order from the Engineer;
- c) within 24 hours of receiving the written order, confirm the notice of dispute in writing; and
- d) within ten calendar days after receipt of the written order, file a written protest with the Engineer stating clearly and in detail the basis of objection, and include an itemized statement of any extra costs which have resulted from the disputed work.

If the Contractor fails to comply with the above procedure, the Engineer's ruling shall be final and conclusive and the Contractor shall have no claim for additional compensation or time.

Although not to be construed as proceeding under extra work provisions, the Contractor shall keep and furnish records of all disputed work.

Resolution of claims shall be per specification section 107.11 DISPUTE SETTLEMENT.

#### 104.08 Extra Work

The Engineer shall have the right to require, and the Contractor agrees to do, extra work over and above that which is indicated by the Contract Documents and covered by the unit prices of the Contract or negotiated price or prices, which logically forms a part of the Contract, arising from reasonably unforeseeable conditions, changed requirements or new information. Such additional work shall be undertaken only upon written instructions from the Engineer. Payment for extra work will be made pursuant to Subsection 109.05.

#### 104.09 Force Account Work

Force account work is extra work that is not covered under unit price or lump sum money items in the Contract Documents and where negotiated price or prices have not been agreed upon. Payment for force account work will be made pursuant to Subsection 109.06.

The Contractor shall maintain records in such a manner as to provide a clear distinction between direct cost of extra work paid for on force account basis and cost of other operations performed in connection with the Contract Documents.

Signed, daily reports in duplicate of the extra work to be paid for on a force account basis, shall be furnished to the Engineer by the Contractor. Materials used will be itemized and direct cost of labor and charges for equipment rental will be furnished by the Contractor or Subcontractor. The Contractor will provide names, identifications, and classifications of workmen, the hourly rate of pay and hours of work, and the size, type, and identification number of equipment and hours of equipment operation.

Material charges shall be substantiated by vendors' invoices with copies of such invoices submitted with the reports, or, if not available, submitted with subsequent reports. In the event said vendors' invoices are not submitted within 15 days after completion of the work, Owner reserves right to establish the cost of such materials at the lowest current price at which said materials are available in the quantities concerned, delivered to the location of the work. The Engineer will compare his records with the reports furnished by the Contractor, make any necessary adjustments, and compile the cost of extra work paid for on a force account basis on forms furnished by the Owner. When these extra work reports are agreed upon and signed by both parties, they shall become the basis of payment for the work performed.

#### 104.10 Salvage

When shown or specified, the Contractor shall carefully salvage and stockpile within the construction area all castings, pipe, and any discarded facilities to be disposed of by the Owner.

104.11 General Items of Work

In all Contracts the following items of work are understood to be included as described in Division 2 general technical requirements:

<u>Section</u>	<u>Item of Work</u>
201	Mobilization
202	Temporary Traffic Control
203	Clearing and Grubbing
204	Dust Control
205	Landscaping
206	Restoration and Cleanup

If no pay item is shown in the Proposal for the above items of work, payment shall be considered to be incidental to, or included in, the other items for work in the Contract.

## **105 CONTROL OF WORK**

### **105.01 Authority of the Engineer**

The Contractor shall perform all work to the satisfaction of the engineer. The Contract and Specifications give the Engineer authority over the work. For the purpose of determining the Contractor's duties, liabilities or entitlement to compensation or liability for damages, the decision of the Engineer will be final on all questions including, but not limited to, the following:

- a) Quality and acceptability of materials and work;
- b) Classification and measurement of unit price work;
- c) Acceptability of rates of progress on the work;
- d) Interpretation of plans and specifications;
- e) Fulfillment of the Contract by the Contractor; and,
- f) Payments under the Contract.

The Contractor shall at all times carry out and fulfill the instructions and directions of the Engineer relative to the work.

Upon failure on the part of the Contractor to comply with any reasonable order made under the provisions of this Subsection, the Engineer shall have the authority to cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed and to deduct the cost thereof from any monies due or to become due the Contractor.

The Engineer has the authority to suspend work for causes set forth in Section 108, particularly Subsection 108.05.

The work will not be considered complete until it has passed final inspection by the Engineer and is accepted by the Owner and met warranty requirements. Interim approval of the work by the Engineer during progress of the work signifies favorable opinion and qualified consent; it does not carry with it certification, assurance of completeness, assurance of quality, or assurance of accuracy concerning details, dimensions, and quantities. Such approval will not relieve the Contractor from responsibility for errors, for improper fabrication, for failure to conform with requirements, or for other deficiencies.

### 105.02 Authority and Duties of Inspectors

Inspectors have the authority to:

- a) Inspect all work done and materials furnished including preparation, fabrication, or manufacture of materials to be used;
- b) Report to the Engineer about the progress of the work and the manner it is performed;
- c) Report to the Engineer and notify the Contractor when materials furnished or work performed by the Contractor fail to meet the requirements of the plans and specifications.
- d) Additional authority that may be delegated by the Engineer or Owner.

Inspectors are not authorized to:

- a) Accept work; or,
- b) Alter or waive the provisions of the Contract.

Failure of the Inspector or Engineer to call the attention of the Contractor to faulty work or infringements upon Plans or Specifications shall not constitute acceptance of said work.

### 105.03 Inspection

The Contractor shall allow the Engineer every reasonable facility necessary to obtain information about type and quality of materials used in the work, methods used to complete the work, and progress of the work. The Engineer and the inspector shall be allowed access to all parts of the work to ascertain whether or not the work is performed in accordance with the requirements and intent of the Contract.

The Contractor shall furnish, at no expense to the Owner, samples required for testing purposes. The Contractor shall, at any time before final acceptance of the work, remove or uncover portions of the work as directed by the engineer. The Contractor shall restore the portions of the work to the standard required by the Contract. If the exposed work is acceptable, the uncovering and restoring of the work will be paid for as extra work. If the exposed work is unacceptable, the uncovering and restoring of the work shall be at the expense of the Contractor. Any work done or materials used without approval of the Engineer may be ordered removed and replaced at no expense to the Owner.

When the work affects or may affect property of any other unit of government, political subdivision, utility, or railroad corporation, representatives of that organization shall have the right to inspect the work. Such inspection shall not make any other unit of government, political subdivision, utility, or any railroad corporation a party to the Contract and shall not interfere with the rights of the parties of the Contract.

#### 105.04 Authority of Contractor

The Contractor shall notify the Owner and Engineer in writing of the name, address and telephone number (day and night) of his superintendent who will act as the Contractor's representative and who shall have the authority to act in all matters relating to this Contract. The superintendent shall have full authority to carry out all the provisions of the Contract and to supply materials, equipment, tools and labor without delay for the performance of the work. The Contractor shall also submit in writing to the Owner a résumé of the superintendent's qualifications, years of experience and names of other projects on which he worked in a supervisory capacity. The Contractor shall not remove or replace the superintendent without two weeks prior notice thereof to the Engineer.

The Contractor will supervise and direct the work. He has the authority to determine the means, methods, techniques, sequences and procedures of construction, except in those instances where Owner specifies in the Contract, a means, method, technique, sequence or procedure for construction of that item of work.

Subcontractors will not be recognized as having a direct relationship with the Owner. All persons engaged in the work including employees of subcontractors and suppliers will be considered as employees of the Contractor and their work shall be subject to the provisions of the Contract. References in the Contract Documents to actions required of subcontractors, manufacturers, suppliers or any person other than the Contractor, the Owner or the Engineer shall be interpreted as requiring that the Contractor shall cause such subcontractor, manufacturer, supplier or person to perform the specified action.

#### 105.05 Responsibility of the Contractor

It is the responsibility of the Contractor to do all work and furnish all labor, materials, equipment, tools, and machines necessary for the performance and completion of the project in accordance with Contract Documents within the specified time.

Materials and construction details of plants, forms, shoring false work, and other structures built by the Contractor but not a part of the permanent project, shall meet approval of the Engineer, but such approval shall not relieve the Contractor from responsibility for their safety and efficiency.

The Owner shall not be liable or responsible for any accident, loss, or damage happening to work referred to in the Contract Documents prior to completion and acceptance thereof.

The Contractor shall at all times be responsible for the adequacy, efficiency and sufficiency of subcontractors, manufacturers, suppliers and their employees. All subcontractors, manufacturers and suppliers must have sufficient knowledge, skill and experience to perform properly the work awarded to them.

The Contractor shall at all times be responsible for the adequacy, efficiency and sufficiency of his employees. All workers must have sufficient knowledge, skill and experience to perform properly the work assigned to them.

The Contractor, acting through his superintendent, shall give personal attention to and shall manage the work to the end that it shall be prosecuted faithfully. When the superintendent is not personally present at the job site, his previously designated representative shall be available and shall have the authority to act on the Contract.

The Contractor alone shall at all times be responsible for the safety of his and his subcontractor's employees. The Contractor shall maintain the job site and perform the work in a manner which meets the Owner's and Contractor's responsibility under statutory and common law for the provision of a safe place to work.

The Contractor shall at all times conduct his work so as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the Engineer and proper governmental authority. Fire hydrants on or adjacent to the work shall be kept accessible to fire fighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks, private and public driveways and proper functioning of all gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.

The Contractor shall adopt a written safety program complying with the requirements for employee and public safety set forth herein above. Four (4) copies of the Contractor's safety program shall be submitted to the Engineer. Adoption of and compliance with such program and submission of the copies thereof to the Engineer shall be a condition precedent to the Contractor's right to receive progress payments.

The Contractor shall maintain books, records (including but not limited to financial records), and other evidence and documents pertinent to the performance of the work under this Contract in accordance with generally accepted principles and practices. The Contractor will provide proper facilities to the Owner for access, inspection, and copying at all times. The books, records documents, etc. to be maintained under this paragraph shall be maintained and made available during performance of the Contract and for three (3) years after completion of the work, or settlement of any claims arising thereon, whichever is later.

The Owner's access to such records is not limited to the required retention periods. The Owner and its authorized representative shall have access to such records at any reasonable time for as long as the records are maintained.

#### 105.06 Notifications Relative to Contractor's Activities

The Contractor shall take special notice of Subsection 105.05. The Contractor shall obtain prior approval from the Engineer for closing or partial closing of any street. The Contractor shall, without exception, notify the Fire Department, Police Department, ambulance services, U. S. Postal Service, garbage services, and Lane Transit District, Springfield School District 19, and Eugene School District 4-J transportation supervisors when closing any street, or portion thereof, in the City of Springfield for any purpose. Said notice shall include the limits and approximate duration of the closure. The Contractor shall promptly notify said departments when the streets are again passable for emergency vehicles.

The Contractor shall also cause the least inconvenience possible to businesses, property owners and residents. Each business and residence shall be given an approved, printed notice of a pending closure. Ample time shall be allowed for the movement of vehicles away from the project. In emergencies, Contractor shall notify businesses and residents directly and assist them in leaving the area as needed.

The Contractor shall leave his night emergency telephone number or numbers with the Chief of Police so that contact may be made easily at all times in case of barricade trouble or other emergencies.

If the project or work thereunder involves the crossing of any railroad line or encroachment of any railroad right-of-way, the Contractor shall give notice prior to construction, as contained in the approved program as required in Subsection 107.18 RAILROAD CROSSINGS OR Right-of-way.

Contractors shall notify all utility companies and agencies a minimum of 24 hours prior to commencing work. Contractors shall request on-site utility locations by phone and confirm in writing at least two working days prior to commencing work and adhere to above notification requirements during the progress of the work, where the work is such that on-site location of utilities is necessary as the work progresses. Excavation contractor must comply with the provisions of ORS 757.541 to 757.574.

When performing work in streets and easements, whether inside or outside Owner's legal boundaries, the Contractor shall notify all of the affected local agencies about the operations so as to properly coordinate and expedite the work in such a manner as to cause the least amount of conflict and interference between the operations and those of other agencies.

Notifications shall include, but not be limited to, the time of commencement and completion of work, names of streets or locations of alleys to be closed, schedule of operations and routes of detours where possible.

Any or all damages or claims resulting from improper or insufficient notification of the affected agencies shall be the responsibility of the Contractor.

Owner shall relocate or cause to be relocated all privately or publicly owned utility conduits, lines, poles, mains, pipes and such other facilities within the jurisdiction and control of Owner where such relocation is necessary in order to conform said utility and other facilities to the plans and ultimate requirements of the project.

#### 105.07 Utilities and Existing Improvements

Information shown as to location of the existing water courses, drains, sewer lines or utility lines which cross or are adjacent to the project has been compiled from the best available sources but is not guaranteed to be accurate.

The Contractor shall provide for the flow of sewers, drains, or water courses as approved by the Engineer.

It shall be the responsibility of the Contractor to determine the exact location of all utilities and service connections thereto. The Contractor shall make his own investigations, including contacting the owners of appropriate utilities and making exploratory excavations to determine the locations and type of existing utilities, including service connections, prior to commencing work which could result in damage to such utilities. The Contractor shall immediately notify the Engineer of any utility discovered by the Contractor which is not shown on the Drawings or which is in a different position than shown on the Drawings.

In case it should be necessary to remove, relocate, or temporarily maintain a utility because of interference with the work, the work on the utility shall be performed and paid for as follows:

- a) When it is necessary to remove, relocate, or temporarily maintain a service connection, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the service connection. The work on the service connection shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the service connection has the option of doing such work with his own forces, or permitting the work to be done by the Contractor.
- b) When it is necessary to remove, relocate, or temporarily maintain a utility which is in the position shown on the Drawings, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the utility. The work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with his own forces, or permitting the work to be done by the Contractor.
- c) When it is necessary to remove, relocate, or temporarily maintain a utility which is not shown on the Drawings or is in a position different from that shown on the Drawings and were it in the position shown on the Drawings would not need to be removed, relocated, or temporarily maintained, the cost of which is not required to be borne by the owner thereof, the Owner will make arrangements with the owner of the utility for such work to be done at no cost to the Contractor, or will require the Contractor to do such work in accordance with specification section 109.05 and/or 109.06 on extra work.

No representations are made that the obligations to move or temporarily maintain any utility and to pay the cost thereof is or is not required to be borne by the owner of such utility, and it shall be the responsibility of the Contractor to investigate to find out whether or not said cost is required to be borne by the owner of the utility.

The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the work and for the purpose of maintaining and making repairs to their property.

The Contractor shall make excavations and borings ahead of work, as necessary, to determine the exact location of interfering utilities or underground structures.

Ordinarily, utility companies responsible for facilities located within the right-of-way will be required to complete any installation, relocation, repair, or replacement prior to the commencement of work by the Contractor. However, when this is not feasible or practicable or the need for such work was not foreseen, such utility owners or Owner shall have the right to enter the right-of-way and upon any structure therein for the purpose of making new installations, changes or repairs. Operations shall be conducted so as to provide the time needed for such work to be accomplished during the progress of the improvement, and at no additional cost to Owner.

#### 105.08 Cooperation Between Contractors

The Owner reserves the right to contract for and perform other or additional work on or near the work covered by this Contract.

When separate contracts are let within the work area, each contractor involved will submit a realistic progress schedule for the Owner's approval. Each party shall have the right to review all schedules. After consultations with the contractors, the Owner will determine acceptable schedules.

Each contractor involved shall assume all liability in connection with the Contract and shall protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the Contractor due to the presence and operations of other contractors working on or near the same project.

The contractor shall arrange the work and shall place and dispose of the materials being used so as not to interfere with the operations of other contractors on or near the same project.

When a dispute arises between two or more contractors engaged on work in the same or adjacent areas as to the respective rights of each, the Engineer will determine the matters at issue and define the respective rights of the various interests involved. The Engineer's decision shall be final and binding on all parties concerned.

If the contract gives notice of other work that may affect the work of this Contract, the coordination of the work shall be taken into account by the Contractor, and any resulting costs shall be considered incidental work.

In an emergency, the contractor that is immediately accessible may make repairs to a facility or utility of another contractor.

### 105.09 Survey Service

The Contractor shall give notice to the Engineer not less than two working days in advance of when survey services will be required in connection with the laying out of any portion of the work.

Engineer will furnish and set construction stakes establishing lines and grades as he determines necessary for all work under the Contract, including lines and grades for street excavation and fill, curbs and gutters, and structures.

Engineer will furnish appropriate offset lines and grades for all projects involving trenching operations. Engineer will not transfer the offset lines or grades into the ditch, to batterboards, or any other point within the work which is provided by the Contractor.

### 105.10 Protection of Survey Markers

#### Permanent Survey Markers

The Contractor shall notify the Engineer not less than two working days prior to the start of work in order that the Engineer may take necessary measures to insure the preservation of survey monuments, stakes, lot stakes and bench marks. The Contractor shall not disturb permanent survey monuments, stakes, lot stakes or bench marks without the consent of the Engineer, and shall notify the Engineer and bear the expense of replacing any that may be disturbed without permission. Replacement of disturbed permanent survey markers shall be done by the Engineer with all costs charged against and deducted from payments for Contract work.

When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, the monument cover shall be adjusted to the new grade without disturbing the underlying monument.

#### Lines and Grades

The Contractor shall preserve construction survey stakes and marks for the duration of their usefulness during construction. If any construction survey stakes are lost or disturbed through negligence of the Contractor and in the judgment of the Engineer need to be replaced, such replacement shall be by the Engineer at the expense of the Contractor. The cost of replacement shall be charged against, and shall be deducted from, payment for Contract work, except as otherwise stated below:

1. Where the survey stake and/or mark lies within the construction area and cannot be preserved, in such a case, the Contractor shall notify the Engineer sufficiently in advance so that the Engineer may have a point properly referenced before it is destroyed.
2. Where a survey stake and/or mark is destroyed or displaced by vandalism not as an act of the Contractor or any of his employees.

#### 105.11 Protection of Property

The Contractor shall protect all public and private property insofar as it may be endangered by operations and take every reasonable precaution to avoid damage to such property.

The Contractor shall restore and bear the cost of any public or private improvement, facility or structure within the right-of-way or easement which is damaged or injured directly or indirectly by or on account of any act, omission, or neglect in the execution of the work which is not designated for removal but visibly evident or correctly shown on the Plans. The Contractor shall restore any damaged public or private improvement to a condition as good or better than that existing before such damage or injury occurred by repairing, rebuilding, or otherwise effecting restoration thereof, or if this is not feasible, make a suitable settlement with the Owner of the damaged property, all at no expense to the Owner.

The Contractor shall give reasonable notice to occupants of buildings on property adjacent to the work to permit occupants to remove vehicles, trailers, and other possessions, as well as salvage or relocate plants, trees, fences, sprinkler systems, or other improvements in the right-of-way, which are designated for removal or which may be destroyed or damaged by work operations.

The Contractor shall protect all designated trees and planted areas within the right-of-way or easements. He shall also exercise care and conduct operations so as to minimize damage to new planted areas.

#### 105.12 Protection of Work

Until acceptance of the project, the Contractor shall at all times protect from damage and preserve all materials, supplies, equipment of any description, and all work already performed, from the nature of the work, the action of the elements, and damage by any person or persons or from any other cause whatsoever.

#### 105.13 Use of Improvement During Construction

Upon request and with approval of the Owner, or upon order of Owner, Contractor will be relieved of the duty of maintaining and protecting certain portions of work which are approved to be placed in service and which have been completed in accordance with the Contract Documents, including cleanup.

Owner shall have the right to take possession of and use any completed or partially completed portions of the improvement. Such use shall not be considered as final acceptance of the improvement or portions thereof.

In addition, such action by Owner will relieve the Contractor of responsibility for injury or damage to said completed portions of work resulting from use by public traffic or from the action of the elements or from any other cause, except injury or damage resulting from Contractor's own operations or from his negligence. Contractor will not be required to again clean up such portions of the improvement prior to field acceptance, excepting for such items of work as result from his operations. However, nothing in this section shall be construed as relieving Contractor from full responsibility for making good work or materials found to be defective.

#### 105.14 Use of Light, Power and Water

The Contractor shall furnish temporary light, power and water complete with connecting piping, wiring, lamps, and similar equipment necessary for the work as approved. He shall install, maintain and remove temporary lines upon completion of work. He shall obtain all permits and bear all costs in connection with temporary services and facilities at no expense to Owner. He shall conform to applicable rules and codes in the use of these facilities.

#### 105.15 Subsurface Data

All information obtained by Engineer regarding subsurface information and groundwater elevations will be available for inspection at the office of the Engineer upon request. Known utilities and structures expected to be adjacent to or encountered in the work are shown on the Plans. Such information is offered as supplementary information only. Neither the Engineer nor Owner assumes any responsibility for the completeness or interpretation of such supplementary information.

Logs of test holes, test pits, soil reports, ground-water levels and other supplementary subsurface information are offered as the best available information of underlying materials and conditions at the locations actually tested. Owner will not be liable for any loss sustained by the Contractor as a result of any variance between conditions contained in or interpretations of test reports and the actual conditions encountered during progress of the work.

The Contractor shall examine the site and available records, as set forth in Subsection 102.06. The submission of a Proposal shall be conclusive evidence that the Bidder has investigated and is satisfied as to the subsurface conditions to be encountered, as to the character, quality and quantities of work to be performed and materials to be furnished, and as to the requirements of the Contract Documents.

#### 105.16 Verbal Agreements

No verbal agreement or conversation with any officer, agent or employee of the Owner, either before or after execution of the Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract. Any such verbal agreement or conversation shall be considered as unofficial information and in no way binding upon Owner.

#### 105.17 Dust, Noise and Pollution Control

The Contractor shall conduct the work in accordance with local laws and ordinances, with the applicable sections of ORS 449 and 468, with all regulations of the Department of Environmental Quality and other agencies of the state, and with all laws and regulations of the federal government and in accordance with subsection 107.01. All practicable means shall be exercised to prevent, control and abate the pollution of waters and to maintain reasonable purity of the air. The Contractor shall abate dust nuisance by cleaning up, sweeping, sprinkling with water, or other means as necessary to accomplish the suppression of dust in conformance with Section 204 DUST CONTROL.

The Contractor shall conduct the work in conformity to all applicable laws and regulations governing construction noise.

#### 105.18 Temporary Traffic Control

The Contractor shall provide and be responsible at all times for such flagpersons, signs and other devices not otherwise specified to be furnished by the Owner, in conformance with Section 202 TEMPORARY TRAFFIC CONTROL.

Upon failure to immediately provide the necessary flagpersons, or to provide, erect, maintain, and remove barricades, lights, and standard signs when so ordered, Engineer shall be at liberty, without further notice to Contractor or his Surety, to do so and deduct all of the costs thereof from any payments due or coming due to Contractor.

#### 105.19 Removal of Unacceptable or Unauthorized Work

If the Engineer finds the work performed is not in conformance with the Contract, the Engineer will:

- a) Reject the work and have it replaced or otherwise corrected by the Contractor at no expense to the Owner, or;
- b) Accept the work as suitable for the intended purpose, document the basis of acceptance, and adjust the amount paid to the Contractor.

The engineer's judgment concerning acceptability of work will be final. Unacceptable work found before final acceptance of the work shall be corrected or removed as directed by the Engineer and replaced by work and materials conforming to the requirements of the Contract.

Unauthorized work will not be paid for and may be ordered removed at the Contractor's expense.

Unauthorized work is:

- a) Work done beyond lines shown on the plans or established by the engineer;
- b) Work done contrary to the engineer's instructions; or,
- c) Work done without the engineer's written authorization.

If, when ordered by the engineer, the Contractor fails to correct or remove unacceptable work or to remove unauthorized work, the Engineer may have the correction or removal and replacement done by others. The cost shall be borne by the Contractor and may be deducted from payments due or to become due to the Contractor.

#### 105.20 Restoration and Cleanup

Periodically, or as directed by Engineer, as the work progresses, and immediately after completion of the work, Contractor shall clean up and remove all refuse, debris, equipment and unused materials of any kind resulting from the work. Upon failure to do so within twenty-four hours after directed, the work may be done by Owner or third party and the cost thereof be deducted from any payment due Contractor.

As a condition precedent to final acceptance of the project, all equipment and temporary structures, and all rubbish and waste shall be removed and the right-of-way and premises shall be generally cleaned up to conform substantially to conditions as they existed before the commencement of work, as approved.

Refer to Section 206, RESTORATION AND CLEANUP, for additional requirements.

#### 105.21 Final Inspection

When all on-site construction work on the project is completed, the Contractor shall notify the Engineer in writing that the project is ready for final inspection. The Engineer will make an inspection within 15 calendar days of receiving notification. The Engineer will notify the Contractor, in writing, within ten calendar days thereafter. If all construction work required by the Contract is found complete and satisfactory, this inspection will constitute the final inspection.

If any work is found incomplete or unsatisfactory, the Engineer will give written instructions as to what shall be done to satisfactorily complete the work. After complying with the engineer's instructions, the Contractor shall follow the above procedures of notification, requesting a final inspection.

The Engineer will issue a notice to the Contractor when all the following work is satisfactorily completed.

- a) All work required under the contract;
- b) All change order work;
- c) The final trimming and cleanup work; and,
- d) All required certifications, bills, forms, and other documents are received from the Contractor.

#### 105.22 Final Acceptance

After final inspection of all work is made, and the work is found acceptable, the Owner will make final acceptance of the work under the Contract.

The Contractor will be notified, in writing, within ten calendar days after final acceptance of the work.

## **106 CONTROL OF MATERIALS**

### **106.01 Quality of Materials**

Only new materials, parts, products and equipment which conform to specified requirements shall be used in the work, unless directed by the Engineer, the Proposal and Special Provisions to salvage and reuse existing materials. Materials and products which after approval have become unsuitable or unacceptable for use, regardless of cause, will be rejected by the Engineer and shall not be used.

### **106.02 Sampling and Testing**

Tests of materials will be made by Owner in accordance with methods described or designated in the applicable Specifications, and at any time during the production, fabrication, preparation and use of the materials.

Owner reserves the right to require samples and to test products for compliance with pertinent requirements irrespective of prior certification of the products by the manufacturer thereof as set forth in Subsection 106.03.

When tests of materials are necessary, as determined by the Engineer, such tests will be made by and at the expense of Owner unless otherwise specified. The Contractor shall afford such facilities as required for collecting and forwarding samples where practical and withhold from use the materials represented by the samples until tests have been made and materials found equal to requirements of the Specifications or to approved samples. In all cases the required samples shall be furnished without charge and in ample time to permit testing of materials prior to use. No claim will be allowed for any delay caused by awaiting test results. Safety measures and devices to protect those who take the samples shall be provided.

In the absence of any reference Specification, it shall be understood that such materials shall meet the specifications and requirements of the American Society for Testing and Materials (ASTM), or the American Association of State Highway and Transportation Officials (AASHTO), as directed by the Engineer. When there is no pertinent coverage under ASTM or AASHTO, the material concerned shall meet specifications and requirements of applicable commercial standards of the Commodity Standards Division of the U.S. Department of Commerce. Lacking such coverage, materials shall meet requirements established by reputable industry for a high-quality product of the kind involved.

All testing shall be performed by or handled through a testing laboratory as directed by the Engineer.

In the event Owner requests tests and the materials fail, the Contractor shall bear all costs for all subsequent testing necessary to meet specified requirements.

#### 106.03 Certification

For commercial products inclusive of industry standardized products, in lieu of normal sampling and testing procedures by the Contractor and Owner, the Engineer may accept from Contractor two copies of the manufacturer's certification with respect to the product involved, under conditions set forth as follows:

1. Certification shall state that the named product conforms to Owner's requirements and that representative samples thereof have been sampled and tested as specified.
2. Certification shall either be accompanied with a certified copy of test results, or certify that such test results are on file with the manufacturer and will be furnished to Engineer upon request.
3. Certification shall give the name and address of the manufacturer, the testing agency and the date of tests; and shall set forth the means of identification which will permit field determination of the product delivered to the project as being the product covered by the certification.
4. Owner will not be responsible for any costs of certification or for any costs of the sampling and testing of products in connection therewith.

#### 106.04 Inspection Requirements

Access to Engineer or his representatives shall be allowed to all parts of the work and to plants of manufacturers at all times. The Contractor shall furnish them with every reasonable facility for ascertaining if the work meets requirements and intent of the Contract Documents. All samples required for testing purposes shall be furnished at no expense to Owner.

#### 106.05 Inspection By Others

Inspection of work by persons other than representatives of the Owner will not constitute inspection by Owner, except as set forth in Section 106.03.

#### 106.06 Storage and Protection of Materials

Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the right-of-way may be used for storage purposes, including Contractor's equipment, but any additional space required therefor shall be provided by Contractor at his expense. Private property shall not be used for storage purposes without written permission of the property owner or lessee. When requested, copies of such written permission shall be furnished to the Engineer.

#### 106.07 Trade Names, Approved Equals or Substitutions

In order to establish a basis of quality, certain processes, types of machinery or equipment or kinds of materials may be specified either by description of process or by designating a manufacturer by name and referring to his brand or product designation, or by specifying a kind of material. It is not the intent of these Specifications to exclude other processes, equipment or materials of equal value, utility or merit.

Whenever a process is designated or a manufacturer's name, brand, or item designation is given or whenever a process or material covered by patent is designated or described it shall be understood that the words 'or approved equal' follow such name, designation or description, whether in fact they do so or not.

If it is desirable to furnish items of equipment by manufacturers other than those specified as a substitute after the Contract is executed, approval shall be secured prior to placing a purchase order or furnishing same.

If the Proposal includes a list of equipment, materials or articles for which Contractor must name the manufacturer at time of submission of the Bid, no substitutions therefor will be permitted after a Proposal has been accepted, without the express consent of Owner.

The Contractor shall assume full responsibility for all expenses involved in making any required changes in the Contract Documents to accommodate a substitution approved by the Engineer for the convenience of Contractor, or to circumvent any unforeseen difficulty in obtaining a specified article.

#### 106.08 Owner Furnished Equipment and Materials

Equipment and materials furnished by the Owner will be delivered or made available to the Contractor at the locations specified. An inspection of the Owner-furnished equipment and materials shall be made at the time of delivery to the Contractor to satisfy the Owner and the Contractor that the quantity and quality of the equipment and material is satisfactory for use in the work. Thereafter, the Contractor will be responsible for the equipment and material. Deductions will be made from payments due or to become due to the Contractor for any shortages, deficiencies, or damages which may occur after such delivery, and for any demurrage charges.

## **107 LEGAL RELATIONS AND RESPONSIBILITIES**

### **107.01 Laws and Regulations**

#### **A. General**

The Contractor shall keep fully informed of all Federal and State laws, ordinances and regulations, and all orders and decrees or 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 work. All such laws, ordinances, regulations, orders and decrees shall be observed and complied with. The Contractor shall protect and indemnify Owner and his representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by Contractor, his Subcontractors, suppliers of materials or services, or others engaged by the Contractor, or their employees.

Attention is directed to the statutes of the State of Oregon for public contracts and public works contracts. Chapter 279 of the Oregon Revised Statutes, as amended or superseded, including the latest additions and revisions, is incorporated by reference as part of the Contract Documents.

General requirements for street and sewer improvements contained in Chapter 10 of the Springfield Code 1965 as revised shall apply to all applicable improvements.

#### **B. Protection of the Environment**

The Contractor's attention is directed to ORS 279 dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the work. Any unforeseen work relating to the prevention of environmental pollution or the preservation of natural resources shall be considered extra work.

The Contractor shall conduct operations in conformity to the applicable sections of ORS Chapter 449 and 468, laws amendatory thereto, and all pertinent regulations of the Department of Environmental Quality and other agencies of the state and the federal government, as well as ordinances or resolutions enacted or adopted by local authorities. It is public policy that all practicable means be exercised to prevent, control, and abate the pollution of waters of the state, and to maintain reasonable purity of the air by the control or abatement of air pollution.

The Contractor shall exercise every reasonable precaution throughout the life of the Contract to safeguard the air resources of the state by controlling or abating air pollution, as defined in ORS 468.275, in accord with the policy and purpose set forth in ORS 468.280 and 468.285.

Federal, state, and local agencies having a responsibility and/or jurisdiction relating to the environment include, but are not limited to, the following agencies:

- U.S. Department of Agriculture
- U.S. Department of Health and Human Services
- U.S. Environmental Protection Agency
- U.S. Corps of Engineers
- U.S. Coast Guard
- U.S. Department of Interior
- U.S. Department of Labor
- U.S. Department of Transportation
- U.S. Forest Service
- Heritage Conservation and Recreation Services
- Oregon Department of Environmental Quality
- Oregon Department of Geology and Mineral Industries
- Oregon Department of Agriculture
- Oregon Department of Energy
- Oregon Department of Fish and Wildlife
- Oregon Department of Forestry
- Oregon Department of Human Resources
- Oregon Department of Water Resources
- Oregon Division of State Lands
- Oregon Land Conservation and Development Commission
- Oregon Soil and Water Conservation Commission
- Local County Courts and Boards of Commissioners
- Local City Councils and Commissions
- Local Planning Commissions

#### 107.02 Subcontractors

The Contractor agrees not to assign, transfer, convey or otherwise dispose of the Contract or the right, title or interest therein either in whole or in part, or the power to execute such contract, to any person, firm or corporation without the written consent of the Owner.

No portion of the contract shall be sublet, subcontracted or performed by other than the Contractor's own organization except with the written consent of the owner. Requests for permission to sublet or subcontract any portion of the Contract or to have any of the work performed by another organization shall be in writing and accompanied by a demonstration that the organization which will perform the work is experienced and equipped for such work.

Written consent to assign, transfer, convey, sublet, subcontract or otherwise dispose of any portion of the Contract or to have portions of the work performed by other than the contractor's own organization shall not relieve the Contractor of any responsibility under the Contract or for the fulfillment of the Contract.

The Contractor shall perform with the Contractor's own organization Contract work amounting to not less than 40 percent of the amount of the Contract as awarded, except that any items designated in the Contract as specialty items may be performed by subcontract. The cost of any such specialty items may be deducted from the amount of the Contract before computing the amount of work required to be performed by the Contractor's own organization. The term "own organization" refers only to workers employed and paid directly by the Contractor and equipment owned or rented by the Contractor.

The Contractor shall make payment for subcontract work, performance of specialty items and other Contract work performed by others in the same units and on the same basis of measurement as apply under the Contract.

In making payment to subcontractors and to others by whom work under the Contract is performed, the Contractor shall protect against the possibility of overpayment, and shall assume losses that result from overpayment. While the engineer may estimate the quantities of work performed and of materials on hand for inclusion in progress payments, there is no guarantee of the correctness of such estimates. No incorrect estimate, regardless of by whom or when given, will be binding upon the Owner in final settlement.

The Contractor shall direct and coordinate the operations of subcontractors and others performing the work and shall insure that the orders of the Engineer are promptly carried out. Failure of the Contractor to control the work of subcontractors and other employees may result in the issuance of orders requiring the cancellation of the subcontracts and the removal of the subcontractors and other employees from the work site.

#### 107.03 No Waiver of Legal Rights

Owner shall not be precluded or estopped by any measurement, estimate or certificate made either before or after completion and acceptance of work or payment therefor, from showing the true amount of character of work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that work or materials do not conform in fact to the Contract. Owner shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate, or payment in accordance therewith, from recovering from the Contractor and his Sureties such damages as it may sustain by reason of his failure to comply with terms of the Contract, or from enforcing compliance with the Contract. Neither acceptance by Owner or by any representative or agent of the Owner of the whole or any part of the work, nor any extension of time,

nor any possession taken by Owner, nor any payment for all or any part of the project, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or any right to damages herein provided. A waiver of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

#### 107.04 Other Contracts

Owner shall have the right to let other Contracts to be coordinated with this contract. The Contractor shall cooperate with and afford such other Contractors reasonable opportunity for introduction and storage of materials and for execution of their work. Any matter of dispute shall be decided by the Engineer, and his decision shall be binding. If any part of the work depends for its proper execution upon work of any such other Contractor, the Contractor shall inspect and promptly report to the Engineer any defects that affect subsequent work. Failure to do so shall constitute an acceptance of such other Contractor's work as fit and proper for the reception and attachment of his own work and equipment.

#### 107.05 Hold Harmless

Contractor shall defend, indemnify and hold harmless Owner from and against all liability or loss and against all claims or actions based upon or arising out of damage or injury to persons or property caused by or sustained in connection with the performance of this Contract by Contractor except, pursuant to ORS 30.140, for losses, claims, or actions resulting from the sole negligence of Owner.

The Contractor shall assume all responsibilities for the work, and bear all losses and damages directly or indirectly resulting to the Contractor, the Owner, or to others on account of the character or performance of the work, unforeseen difficulties, accidents, or any other cause whatsoever. The Contractor shall assume defense of, indemnify and save harmless the Owner, its officers, and employees from all claims, liability, loss, damage and injury of every kind, nature and description, directly or indirectly resulting from activities in the performance of the Contract, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Contractor or any Subcontractor under the Contract or any way arising out of the Contract, irrespective of whether any act, omission or conduct of the Owner connected with the Contract is a condition or contributory cause of the claim, liability loss, damage or injury and irrespective of whether act, omission, or conduct of the Contractor or Subcontractor is merely a condition rather than a cause of a claim, liability, loss, damage or injury. The Contractor shall not be liable for nor be required to defend or indemnify, the Owner relative to claims for damage or damages resulting solely from acts or omissions of the Owner, its officers, agents, or employees.

### 107.06 Insurance

The Contractor shall provide and maintain general liability, auto liability, property, and workers' compensation insurance for life of this Contract.

#### General Liability Insurance

The Contractor shall maintain an ISO Commercial General Liability insurance policy (or an equivalent policy approved by Owner) with combined single limits of at least \$1,000,000 per occurrence for bodily injury, personal injury, and property damage and an aggregate limit of at least \$2,000,000. The policy shall include coverage for contractual liabilities.

#### Comprehensive Automobile Liability Insurance

The Contractor shall maintain an automobile liability insurance policy with combined single limits of at least \$1,000,000 per occurrence for bodily injury, personal injury, and property damage.

#### Additional Insured Endorsement

The general and automobile insurance policies specified above shall include endorsements naming as an additional insured "the City of Springfield, its agents, employees and officials all while acting within their official capacity as such."

#### Property Insurance

Depending on the nature of the construction contemplated under this contract, Owner may require Contractor to provide property insurance. Refer to Special Provisions section of this Contract.

#### Workers' Compensation Insurance

Contractor, its subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

Contractor is responsible for maintaining workers' compensation insurance for his employees and assuring that his subcontractors, if any, also maintain workers' compensation insurance. Contractor shall defend, indemnify, and hold Owner harmless from any liability for any workers' compensation claims costs, fines, or costs whatsoever arising from Contractor's or his subcontractors' failure to comply with ORS 656.017.

### Additional Policies and Special Coverages

Refer to the Special Provisions section of this Contract for additional coverages that may be required.

### Certificates of Insurance

Certificates of insurance evidencing all policies required by this Contract shall be delivered to the Owner prior to the commencement of any work. All certificates shall include a 30-day notice of cancellation clause and required additional insured endorsements. The Owner has the right to reject any certificate for unacceptable coverage and/or companies.

### 107.07 Royalties and Patents

The Contractor shall pay all royalties and license fees. The Contractor shall see the Owner free, indemnify and defend Owner, from all loss or damage that may result from the wrongful or unauthorized use of any patented article or process.

### 107.08 Permits

The Contractor shall secure all municipal, county or state permits or licenses necessary or incidental to performance of work under this Contract. All permit requirements pertaining to the project shall be complied with during its progress.

### 107.09 Wage Rates

Each worker in each trade or occupation employed in the performance of the Contract either by the Contractor, Subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the Contract, shall be paid not less than the applicable prevailing rate of wage, the existing prevailing rate of wage in effect at the time the specifications are first advertised for bid solicitations, and which schedule is a part of the Contract Document. (Reference: ORS 279.352)

No person shall be employed for more than eight (8) hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed shall be paid at least time and a half the person's regular rate of pay for all time worked in excess of eight (8) hours a day and time worked on Saturday and on any legal holiday specified in ORS 279.334. (Reference: ORS 279.316)

The Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. (Reference: ORS 279.320)

#### 107.10 Payment of Obligations

Contractor shall: (1) Make payment promptly as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided in this contract. (2) Pay all contributions or amounts to the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. (3) Not permit any lien or claim to be filed or prosecute against the state, county, school district, municipality, municipal corporation, or subdivision thereof on account of any labor or material furnished. (4) Pay to the Department of Revenue all sums withheld from employees pursuant to 316.167.

If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contract or subcontractor by any person in connection with this contract as such claim becomes due, the proper officer or employees representing Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due the Contractor by reason of this contract.

The payment of a claim in the manner authorized above shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

#### 107.11 Dispute Settlement

In the event the Contractor disagrees with a decision of the Engineer and has filed a written protest in accordance with section 104.07 Disputed Work, the Owner shall review the appeal and will try to transmit his decision in writing to the Contractor within 30 days from the date of receipt of the appeal.

In the event the Owner elects to do so, the Owner may establish a "Claims Review Board" either to assist in reviewing appeals hereunder or to consider Contractor appeals directly.

During the pendency of an appeal any related work performed by the Contractor shall be done at his risk unless authorized by the Engineer.

Except as otherwise herein provided, any controversy, claim, or dispute arising out of or relating to this Contract, or the breach thereof, may be settled by arbitration in accordance with Construction Industry Arbitration Rules of American Arbitration Association. Provided, however, that in the event either party to such arbitration proceedings desires to join an additional party to such proceeding, which is not bound to proceed by arbitration then such party may transfer such arbitration proceeding to a court of competent jurisdiction as defined below so that such third party may be made a party to such proceeding.

The Contractor or subcontractors shall not delay the work because arbitration proceedings are pending, unless he shall have written permission from the Engineer to do so. Such delay shall not extend beyond the time when the arbitrators shall have opportunity to determine whether the work shall continue or be suspended pending decision by the arbitrators of such a dispute. Any request for arbitration shall be in writing and shall be delivered to the Engineer and any adverse party either by personal delivery or by registered mail addressed to the last known address of the parties in dispute.

In the event Owner initiates arbitration, suit, action, or other proceeding against the Contractor for damages the prevailing party in such suit or action shall be entitled to recover its reasonable attorney's fees therein and in any appeal therefrom.

The parties hereby stipulate and consent that jurisdiction and venue shall be exclusively for all matters arising under this agreement in the courts of the State of Oregon or in the United States District Court for the District of Oregon.

All terms and provisions of this agreement shall be construed according to Oregon law, it being agreed by the parties that the agreement was entered into in the State of Oregon.

#### 107.12 Protection of Other Governmental Authorities

Whenever work under the Contract affects or may affect public property owned by or under the jurisdiction of any governmental authority, agency or district, including governmental subdivision other than the Owner, the Contractor shall indemnify and save harmless such governmental authority, its officers, agents and employees, from loss, damage or claim of loss or damage to such property or the use thereof, arising from work under the Contract. Any bond or insurance and any special guarantee deposit required by such governmental authority, shall be supplied before beginning any portion of the work which affects or may affect the property of such governmental authority or the use thereof.

### 107.13 Public Safety and Convenience

The Contractor shall conduct the project with proper regard for the safety and convenience of the public. When the project involves use of public ways, flagpersons shall be provided when directed, and means of free access to all fire hydrants, service stations, warehouses, stores, houses, garages and other property shall be maintained. When access to a business or businesses may be confusing for the traveling public due to operations of the contractor, the Contractor shall provide adequate signage to clarify alternate or existing access to the business(es). Private residential driveways shall be closed only with approval of the Engineer or specific permission of the property owner. Normal operation of public transit vehicles shall not be interfered with unless otherwise authorized. The contractor shall not obstruct or interfere with travel over any public street or sidewalk without approval. Open trenches and excavations shall be provided with adequate barricades of an approved type which can be seen from a reasonable distance. At night, all open work and obstructions shall be marked by lights. The Contractor shall install and maintain all necessary signs, lights, flares, barricades, railings, runways, stairs, bridges and facilities. The Contractor shall observe all safety instructions received from Engineer or governmental authorities, but following of such instructions shall not relieve Contractor from his responsibility or liability for accidents to workmen or damage or injury to person or property.

Emergency traffic such as police, fire and disaster units shall be provided reasonable access to the work area at all times.

The Contractor shall be liable for any damages which may result from failure to provide such reasonable access or failure to notify the appropriate authority.

### 107.14 Personnel Safety

The Contractor shall be responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Safety provisions shall conform to the applicable federal, state, county, and local laws, ordinances and codes. Where any of these are in conflict, the more stringent requirement shall be followed.

The duty of the Engineer to conduct construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the construction site.

### 107.15 Detours

All detours caused by work operations, or for convenience of the Contractor, shall be constructed and maintained at no expense to Owner. Plans for such detours shall be submitted to Engineer for approval.

The Contractor shall construct and maintain temporary detours to provide adequate passage of public traffic and protection of the work at all times. If a detour established by the Contractor causes or may cause difficulty or confusion regarding access to a business, the Contractor shall provide signs to direct the traveling public to the business.

Detours within the limits of the project such as side street crossings, temporary bridges over freshly placed concrete, or utilization of one or more lanes of the construction area for maintenance of traffic shall be the responsibility of the Contractor.

If, in the judgment of the Engineer, one-way piloted traffic is necessary, it shall be provided for as set forth in Section 202 TEMPORARY TRAFFIC CONTROL. The Engineer may recommend if flagging and piloting can be dispensed with after working hours. In the event that flagging and piloting are required after working hours as a result of carelessness or negligence on the part of the Contractor to properly condition work at the end of the day, such piloting and flagging shall be provided by Contractor at no expense to Owner.

Upon failure to immediately provide, maintain, or remove suitable detours or detour bridges when ordered to do so by Engineer, Owner may without notice to Contractor or his Surety provide, maintain, or remove the detour and deduct costs thereof from any payments due or coming due to Contractor.

#### 107.16 Labor

Upon notification in writing from the Engineer, the Contractor shall remove immediately from the job for its duration any laborer, workman, mechanic, foreman, superintendent, or other person employed who is found to be incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fails or refuses to perform his work properly and acceptably.

Attention is directed to Chapter 659, Oregon Revised Statutes relative to unlawful employment practices or discrimination by employers against any employee or applicant for employment because of race, religion, color, sex, or national origin. Particular reference is made to Section 659.030 ORS, which states that it is an unlawful employment practice for an employer, because of the race, religion, color, sex, or national origin of any individual, to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

In the event the Contract is funded in whole or in part by federal funds, the Contractor shall comply with all provisions of Executive Order No. 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of a Contract so funded, or with any such rules, regulations, or orders, the Contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for future government contracts or federally assisted construction contracts, in accordance with procedures authorized in Executive Order No. 11246, and such other sanction may be imposed and remedies invoked as provided in Executive Order No. 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

If it is necessary to perform construction work on Saturdays, Sundays or legal holidays, or outside the eight (8) hour regular working day, Engineer shall be notified of intent to do so one day prior to commencing such overtime work. In any event, all work shall be subject to approval. Prior to the start of such work, the Contractor shall arrange with the Engineer for continuous or periodic inspection of the work, surveys, and tests of materials, when necessary. Contractor shall be responsible for any additional costs incurred for inspection of work, surveys, and tests of materials necessitated by such overtime work.

#### 107.17 Use of Explosives

When the use of explosives is necessary for the prosecution of the work, the Contractor shall obtain a permit from Owner and exercise the utmost care not to endanger life or property, including new work. The Contractor shall be responsible for all damage resulting from the use of explosives.

The transport, storage, and use of all explosives shall be in compliance with all laws and ordinances. Where no local laws or ordinances apply, storage shall be provided satisfactory to the Engineer and in general not closer than 1,000 feet from any road or from any building or camping area or place of human occupancy.

The Contractor shall notify each public utility company having facilities in proximity to the site of the work of the intent to use explosives. Such notice shall be given sufficiently in advance to enable the companies to take steps necessary to protect the facilities. See Specification sections 301.2.02 and 301.3.08C.

#### 107.18 Railroad Crossings or Rights-of-way

The Contractor shall submit a program of proposed operations whenever the project or work thereunder involves the crossing of any railroad line or the encroachment on any railroad right-of-way. This program of proposed operations shall be approved by the appropriate railroad officials and the Engineer before the work is started within such area. The Contractor shall pay for services of flagpersons and/or watchpersons furnished by the railroad company and provide and drive piling, set cribbing, build bridges or tunnels, install enclosing pipe, and do all

other work required by the railroad company or necessary for safety or maintenance of railroad traffic. The Contractor shall furnish any bond or insurance required of the Owner by the railroad company as a result of such intended operations, and indemnify Owner for any and all expenses incurred by Owner, and assume any and all liability or claims thereof imposed on Owner as a result of operations in railroad right-of-way area. All costs resulting from interferences, obstructions or liabilities set forth in this Specification shall be borne by the Contractor whether or not herein specifically mentioned.

#### 107.19 Rights-of-Way, Easements and Premises

Construction activities shall be confined within property lines, limits of easements and limits of construction permits as shown or specified in the Contract Documents, unless arrangements are made with owner(s) of adjacent private property. Prior to the use of any private property outside these specified boundaries, written permission of the property owner(s) shall be filed with the Engineer; upon terminating such usage, a release from all damages, signed by the property owner(s), shall be filed with the Engineer. Contractor shall save and hold harmless Owner from any loss or claim for damages resulting from unauthorized use of private property.

The specified work areas shall not be unreasonably encumbered with materials and equipment, and permits for special occupancy and use of the specified work areas shall be obtained from the proper agencies and all associated costs borne by the Contractor. The Engineer's directions regarding signs, advertisements, fires, and smoking will be followed.

#### 107.20 Waste Sites

Excavated materials not suitable or not required for backfill or embankment shall be deposited on any property within the vicinity of the project, if directed by Engineer, provided such property has a passable access from a public street or alley, all at no cost to Owner or property owners. The limit of free haul shall be 600 feet from the nearest point of the project.

Excavated materials not suitable or not required for backfill or embankment or not to be deposited as specified above shall be deposited on (1) predesignated waste sites contained in the Contract Documents, and/or (2) waste sites provided by the Contractor. All costs for disposing of this excess material shall be incidental to other items of work contained in the Proposal. Fill permits are required for placement of 50 cubic yards or more.

Either type of waste site shall be operated in such a manner as to meet all safety and health requirements of state and local agencies. Sites, operations, or the result of such operations, which create a nuisance problem, or which result in damage to public or private properties will not be permitted.

Permits for dumping on sites designated in the Contract Documents or by the Engineer will be provided by Owner. The Contractor shall obtain any necessary permits for other sites at no expense to Owner. In selecting and obtaining fill sites for excess materials, the Contractor shall be aware of restrictions and regulations related to fill of wetlands, floodways, floodplains, drainage ways, erosion control, etc., and shall obtain all necessary approvals and permits related to the fill. Copies of issued permits will be furnished to Engineer prior to commencing filling operations. Materials shall not be deposited on an unimproved dedicated street without permission of the Engineer. See Section 301.3.09 for further requirements.

Where waste sites are designated in the Contract Documents, the operations shall be performed as directed; and upon completion, the Contractor shall uniformly clean and shape the area as directed.

Where there is additional waste excavation in excess of that needed for the project or for predesignated sites, this material shall be disposed by securing and operating a waste site in conformance with the general requirements hereinbefore described. Contractor may accept any reimbursement that can be secured from the sale of such material.

#### 107.21 Vermin Control

At the time of occupancy by Owner, any structure or structures entirely constructed under the Contract shall be free of rodents, insects, vermin or pests. The Contractor shall arrange and pay for extermination work as may be necessary as part of the Contract work within the Contract time. Work shall be performed by a licensed agency in accordance with the requirements of governing authorities. The Contractor shall assume responsibility for any injury to persons or property resulting from extermination work for the elimination of any offensive odors resulting from extermination operations.

## **108 PROSECUTION AND PROGRESS OF WORK**

### **108.01 Contractor's Construction Schedule**

Before starting work, the Contractor shall submit for written approval a proposed construction schedule to the Engineer. If it is desirable to carry on operations in more than one location simultaneously, a schedule shall be submitted for each location two weeks in advance of beginning such operations. In the event that the Contractor's proposed construction schedule does not meet the necessary construction program schedule as determined by Owner, the Contractor shall resubmit a schedule that conforms as approved.

The schedule shall show the proposed order of work and indicate the time required for completion of the major items of work. This working schedule shall take into account the passage or handling of traffic with the least practicable interference therewith and the orderly, timely and efficient prosecution of work. It will also be used as an indication of the sequence of the major construction operations and as a check on the progress of work, but does not become a part of the Contract.

If requested by the Engineer, the Contractor shall provide weekly progress schedules of expected project activities. The progress schedules shall indicate the Contractor's plan of prosecution of the work in sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, appraise, document, and control their respective Contract responsibilities. The schedule of work, and the work forces and equipment supplied by the Contractor, shall be adjusted periodically as necessary to allow for the completion of the contract work within the contract time. Any work done without notification to the Engineer is subject to rejection.

### **108.02 Preconstruction Conference**

The Contractor shall meet with the Engineer for a preconstruction conference at a time mutually agreed upon to discuss the construction schedule set forth in Subsection 108.01, and items of work which will require special coordination between the Contractor and Owner. The meeting may include representatives of the Owner, Engineer, Contractor, subcontractor, affected utility companies, and other affected agencies.

### **108.03 Notice To Proceed**

Written Notice to Proceed will be given after the Contract has been executed and the Performance Bond, the Payment Bond, and all required insurance certificates have been filed with and approved by the Owner. No work shall commence under the Contract until such written notice has been given.

Notice to proceed for street projects may be delayed by Owner until required utility relocation, construction, or reconstruction has been completed or has progressed to a satisfactory degree of conformance which will allow initial contract work to commence.

Work shall commence within ten days after the date of the Notice to Proceed, or by such other date or time period specified in the Notice to Proceed. The actual date of commencement of work, or the last allowable date for commencement as specified in the Notice to Proceed, whichever is earlier, shall establish the date for commencement of the Contract time. The Contractor shall notify the engineer forty-eight (48) hours in advance of the actual time and place work will be started.

#### 108.04 Contract Time

Time shall be considered the essence of the Contract. The Owner, however, may grant extensions of time to the extent it finds reasonable and justified when the delay is due solely to causes beyond the control of the Contractor and without any fault or negligence or participation by the Contractor, as provided in Section 108.06.

If the delay is due to inclement weather or utility company construction conflicts, Contractor will not be charged working days. For this purpose it will be considered a delay when the daily productiveness does not equal at least 60% of the daily productiveness normally possible at the same stage of construction under favorable conditions. This delay will be automatically accredited to Contractor and will not require written request.

If, in the judgment of the Engineer, insufficient forces are being employed, or inadequate equipment and methods are used, or if progress is for any reason unduly delayed, he may instruct the Contractor in writing to increase his force or equipment, or adopt improved methods to expedite the work, and the Contractor shall heed and follow such instructions, but conformity to the Engineer's instructions shall not relieve the Contractor of any of his responsibilities under the Contract.

If the Contractor at any time falls behind its proposed schedule of work, the Engineer may request and the Contractor shall supply a new schedule of work along with a statement regarding the increased forces or equipment or new construction methods to be employed on the work in order to complete the work within the Contract time. Failure to supply a schedule of work and sufficient forces and equipment to complete the work within the Contract time may be declared a breach of contract by the Engineer.

The Contractor shall complete the work called for under the Contract within the Contract time or adjusted Contract time.

#### 108.05 Suspensions Of Work

##### Suspension by Owner

The Contractor shall immediately suspend work on the project wholly or in part as directed by the Owner for good and sufficient reason. In the event of such suspension, Owner shall, except in emergency, and except as hereinafter provided, give Contractor three days' notice and work shall be resumed within five days after notice has been given

by Owner to Contractor to do so. Owner shall allow Contractor an extension of time for completion corresponding to the total period of temporary suspension, and shall reimburse him for necessary rental of unused equipment, services of watchpersons and other unavoidable expenses by reason of the suspension without fault of Contractor. Contractor shall not be entitled to damages, intangible or overhead costs or anticipated profits from such temporary suspension.

#### Suspension by Engineer

The Contractor shall immediately suspend work on the project wholly or in part as directed by the Engineer pursuant to Subsections 105.01 and 105.02 due to: (1) failure to correct unsafe conditions for working personnel, the general public or Owner's employees, (2) failure to carry out provisions of the Contract Documents, and (3) failure to carry out orders or directions, for such periods as the Engineer may deem necessary due to conditions considered unsuitable for the performance of the work or for any reason deemed to be in the public interest.

The Contractor shall immediately suspend work on the project wholly or in part as directed by the Engineer, for such periods as the Engineer may deem necessary, pursuant to Subsection 105.19 for failure to immediately correct defective and unacceptable work.

#### Suspension by Contractor

Suspending operations because of seasonal conditions or other unsuitable conditions pursuant to Subsection 108.06 shall require the concurrence of the Engineer.

#### Responsibility of Contractor

Voluntary or involuntary suspension or slowdown, with or without the approval of the Engineer, and suspension of work ordered by the Engineer will not be grounds for claims or damages, idle equipment or labor, or extra compensation. No allowance or compensation will be made on account of such suspensions of work except as provided hereinbefore and as provided in Subsection 108.06.

At the commencement of, and during any suspensions of work, the Contractor shall be responsible for the care of work performed and take every precaution to prevent any damage or deterioration of the work. The Contractor shall be responsible for work, including temporary protection devices to warn, safeguard, protect, guide and inform traffic during suspension, the same as though its performance had been continuous and without interferences.

The Contractor shall be responsible and bear all costs for providing suitable provisions for traffic control and for maintenance and protection of the work during suspension for cause. If the Contractor fails to provide for temporary traffic control and to maintain the work, the Engineer may immediately proceed to maintain the work. The cost of such maintenance shall be deducted from payments due or to become due to the Contractor.

### Resumption of Work

In all cases of suspension, work will be resumed only upon written order of the Engineer or Owner.

### 108.06 Delays and Extensions

Contract completion time may be subject to adjustment during the progress of the work at the written request of the Contractor, for causes beyond the control of Contractor and which the Engineer determines actually affected the time necessary for completion of work under the Contract.

Engineer will not consider adjustment of Contract time based on shortage or inadequacy of labor and equipment, negligence or fault of Contractor and other deficiencies or lacks which are within the province of Contractor's control or responsibility. Causes which will be given consideration in justifying adjustment of Contract time will include, but are not limited to, the following:

1. Errors, changes, or omissions in the Contract Documents.
2. Failure of Owner, its representatives and its other Contractors to act promptly in carrying out obligations and duties.
3. Failure of Owner to submit the Contract and Bonds form to the Contractor for execution within the specified time contained in Subsection 103.01.
4. Performance of extra work under Subsection 104.08.
5. Court orders enjoining the prosecution of the project, strikes, acts of God which shall include action of the elements not reasonably foreseeable by the Contractor, or act of Owner not authorized by the Contract or permitted by law.

A Contract time extension will be considered only if the Contractor has given written notice to Engineer of the cause of delay within ten days after the beginning thereof and notice to Engineer of the termination thereof within five days after such termination, and make claim for such extension prior to the Contract completion date. The decision by Engineer of the reasonable term of any extension or denial thereof shall be final.

An adjustment of Contract time, as herein provided, shall be Contractor's sole remedy for any delay in completion of the project arising from causes beyond the control of Contractor, and in no event shall Contractor be entitled to collect or recover any damages, loss or expense incurred by reason of such delay.

### 108.07 Liquidated Damages

The Contractor agrees that the damages for delay sustained by the City by reason of the

Contractor's failure to timely perform its obligations under the Contract are difficult, if not impossible, to ascertain. Such damages include, but are not limited to, the cost of prolonged administration, supervision and inspection and resolution of traffic and public relations issues surrounding the delayed completion. In submitting a bid proposal for a project, Contractor agrees that the amount of liquidated damages as stated in the proposal package supplied by the Owner is a reasonably accurate forecast of the probable damages for delay that would be sustained by City in the event of a delay in completion. Such liquidated damages shall not be the exclusive remedy of City, but shall be in addition to any other remedies City may have for breach of the Contract and shall be in addition to any actual provable damages, other than for delay, sustained by City by reason of a breach of the Contract by Contractor.

When the Contractor believes that all work on the project has been completed, the Contractor will set up a walk-through inspection with the Engineer. A "punch list" of all unfinished or unacceptable items will be made. The Contractor will finish all punch list work before the end of time allowed for the project. If work has not been completed by the end of the time allowed for the project, liquidated damages shall be charged and shall be in addition to any other remedies the City may have for breach of the Contract.

#### 108.08 Contractor's Representative

Before starting work an authorized representative shall be designated who shall have complete authority to represent and to act for Contractor, in his absence from the work site, in all directions given him by the Engineer. Contractor, or his authorized representative, shall supervise the work, and shall be present on site continually during its progress, including such times as only Subcontractors may be actively working on the project. If called for in the Contract Documents, an office shall be maintained on or adjacent to the project site. The Contractor shall keep a complete copy of the Plans and Specifications on or near the site at all times. If Contractor and his authorized representative are not present on any part of the work where it may be necessary to give instructions, directions may be given by Engineer to the superintendent or foreman who may have charge of that particular part of the project, and such order shall be received and followed. Such directions shall not be deemed to change the status of Contractor or Subcontractor, not to make Owner an employer, nor to give Owner direct responsibility for the methods and manner of the work. Such directions of major importance will be confirmed in writing. Any direction will be so confirmed in each case on written request from the Contractor.

#### 108.09 Conflicts, Errors, Omissions, and Additional Drawings

All plans shall be checked and compared prior to construction and Engineer notified of any discrepancies or omissions in order to permit correction by Engineer. Coordination of Plans and Specifications is intended. Labor and materials required for the work shall be furnished if indicated on one and not the other as fully as if mentioned or indicated on both; and should any work or materials be reasonably required or intended for carrying the project to completion which are inadvertently omitted on the Plans and Specifications,

the same shall be furnished as fully as if particularly delineated or described. The intent of the Plans and Specifications is to show and describe a complete project within the limits stated. Dimensions shown on Plans shall be followed rather than scale measurements. Whenever it appears that the Contract plans are not sufficiently detailed or explicit, the Engineer may furnish additional detailed drawings or written instructions. In case of conflict between requirements set forth in the Contract Documents the provisions for order of precedence in Subsection 104.02 shall apply.

#### 108.10 Owner's Right To Do Work

Neglecting to prosecute the project properly, or failing or refusing to perform any of the terms or conditions of the Contract, will permit Owner to supply or correct any deficiency or defect without prejudice to any other remedy. Such action by Owner shall be taken only after three days' notice by Engineer to Contractor and his Surety, unless in the judgment of the Engineer an emergency or danger to the work or to the public exists, in which event action of Owner, as set forth above, may be taken without any notice whatsoever. The cost of such action by owner shall be deducted from the payment then or thereafter due Contractor. The Contractor shall pay Owner any costs in excess of such payment due.

#### 108.11 Termination of Contract

All terms and conditions of the Contract are considered material, and failure by Contractor to comply with any of said terms or conditions shall, at Owner's option, be deemed a breach of contract. Upon such failure, Owner shall have the right, whether an alternative right is provided or not, to declare the Contract terminated. Issuance by Owner or by the Engineer of an order stating that the Contract is terminated, and service of a copy of said order upon Contractor and his Surety, shall be deemed a complete termination of the Contract. Upon the Contract being so terminated, Owner may retain all sums due under the Contract and both the Contractor and his Sureties shall be liable under his bond for all losses, expenses and damages caused to Owner by reason of his failure to complete the Contract, and Surety shall be required, at Owner's option, to complete the project. Notwithstanding such termination, Contractor and his Sureties shall remain liable under the terms of the Contract for work performed prior to such termination. The Engineer will determine the payment due Contractor for work performed prior to the date of Contract termination.

City and Contractor may agree to terminate the contract: (1) If work under the contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of a third party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute; and (2) If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the public works. (ORS 279.326)

Reimbursement for mobilization expenses, when not included in the contract as a separate pay item, including moving equipment to and from the work, will be considered

where the volume of work completed is too small to compensate the Contractor for these expenses under the Contract prices. When an item for mobilization appears in the Contract as a separate pay item, the amount to be paid the Contractor will be the mobilization amount earned in accordance with Section 201.

Acceptable materials obtained by the Contractor and not incorporated in the work may be purchased from the Contractor at actual cost as shown by receipted bills.

#### 108.12 Default By Contractor

The Owner may, without prejudice to any other right or remedy and after giving the Contractor and Contractor's surety seven days' written notice, terminate the employment of the Contractor if the Contractor should:

- a) Be adjudged bankrupt or experience dissolution, termination of existence, insolvency, business failure or discontinuance as a going business, appointment of a receiver of any property of, for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against contractor.
- b) Make a general assignment for the benefit of the Contractor's creditors;
- c) Have a receiver appointed on account of contractor's insolvency;
- d) Fail to supply enough properly skilled workers, proper materials, or adequate equipment for the efficient prosecution of the work;
- e) Fail to make prompt payment to subcontractors or suppliers;
- f) Disregard laws, ordinances, or the instructions of the Engineer; or
- g) Fail to comply with any term, obligation, or covenant or condition contained in this contract, within seven (7) days after receipt of written notice from Owner demanding such compliance.

The Owner will take possession of the premises and all materials, tools, and appliances as well as all other materials on which the Contractor has received partial payment. The Owner may finish the work by any method the Owner deems expedient.

The Contractor shall not be entitled to receive any further payment until the work is completed. On completion of the work, determination shall be made by the Engineer of the total amount the Contractor would have been entitled to receive for the work had the Contractor completed the work. The difference between the total amount and the amounts previously paid to the Contractor shall be called the unpaid balance and if the unpaid balance exceeds the expense incurred by the Owner in completing the work, including expense for additional managerial and administrative services, the excess will

be paid to the Contractor, with the consent of the surety. If the expense incurred by the Owner exceeds the unpaid balance, the amount of the excess shall be paid to Owner by the Contractor or the surety.

Upon completion of the project by others, Contractor will be entitled to the return of all material which has not been used in the work or which has not been paid for, and for all plant, tools, equipment and other property, provided, however, that no claim will be allowed because of usual and ordinary depreciation, loss, wear and tear.

None of the foregoing provisions, or the provisions in Subsection 108.11, shall be construed to require Owner to complete the work, nor to waive or in any way limit or modify the provisions of the Contract relating to the fixed and liquidated damages suffered by Owner on account of failure of Contractor to complete the project within the time prescribed.

#### 108.13 Completion and Acceptance

After completion of the work specified in the Contract, and completion of the final inspection, the Engineer will recommend to the Owner that the work be accepted and payment be made.

No payment made under the Contract except the final payment shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall constitute an acceptance of unauthorized or defective work or improper material.

A certificate of completion or letter of acceptance of the project, submitted by the Engineer or other officer of the Owner, shall constitute final acceptance of the work on the date of the certificate or letter. Such certificate or letter of acceptance shall not constitute an acceptance of any unauthorized work.

The acceptance of the work shall not prevent the Owner from making claim against the Contractor for defective work.

#### 108.14 Final Warranty

The work is guaranteed by the Contractor for a specified period from the date of final acceptance by the owner. If no warranty period is specified, the work shall be guaranteed for one year from the date of final acceptance by the owner. The Contractor's performance bond shall remain in effect during the warranty period.

If, within the warranty period, repairs or changes are required in connection with the work, the Contractor shall promptly, without expense to the Owner:

- a) Place in satisfactory condition all guaranteed work;
- b) Correct all damage to the building site, equipment or contents which is the result

of the use of materials, equipment or workmanship with are inferior, defective, or not in accordance with the terms of the contract; and,

- c) Correct any work, material, equipment, or contents of building, structure or site disturbed in fulfilling the guarantee.

Repairs, replacements or changes made under the warranty requirements shall be warranted for the specified warranty period, or for one year, beginning on the date of the acceptance of the repairs, replacements or changes.

If the Contractor fails within ten days to proceed to comply with the terms of this warranty, the owner may have the defects corrected. The Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to the Contractor and the Contractor or Contractor's surety shall pay the cost.

## **109 MEASUREMENT AND PAYMENT**

### **109.01 Measurement of Quantities**

Payments shall be based on measurements of completed work in accordance with the United States Standard Measures. Units of measurement for payment shall be shown or specified. Engineer will make measurements at no cost to Contractor. In calculating quantities, all lengths and areas will be based on horizontal and vertical measurement, unless otherwise specified.

Basis is defined as the particular standard unit of measurement which will be applied to a particular item of work as shown on the Proposal for a specific Contract. Each basis of measurement herein set forth is generally applicable and will be in effect; however, in case of conflict, the order of precedence will conform to Subsection 104.02.

Volume of materials measured in the vehicles by which they are transported will require computing the volume of the vehicle to the nearest 0.1 cubic yard for its approved capacity, and identification of the vehicle and its capacity. Pay quantities will be determined by vehicle measurement at point of delivery with no allowance for settlement of material during transit. Loads shall be level and uniform. Payment will not be made for material in excess of the approved capacity of the vehicle and deductions will be made for loads below approved capacity.

Volumes of concrete and masonry in structures will be measured according to neat lines, as shown on the Plans or as altered on order of the Engineer.

Volume--Volumes of earthwork, particularly excavation and embankment, will be computed by the average end area method or by other methods of equivalent accuracy.

Weight--When payment for materials other than bituminous cements is on a weight basis and unless otherwise set forth in the Specification under which material is to be furnished, pay quantities will be determined by weighing material on weigh scales provided by the Contractor as set forth hereinafter. Such weighing is to be of material in the hauling vehicle as loaded for delivery. Determination of tare weights and weights of loaded vehicles will be to the nearest ten pounds. Tare weights will be determined by weighing empty vehicles at intervals of such frequency as the Engineer deems necessary to ensure accuracy of pay load weights.

Portland cement will be measured by the pound, hundredweight, ton, sack, bag or barrel. The term barrel of cement will mean 376 pounds, avoirdupois, of cement. The terms sack and bag of cement will each mean 94 pounds, avoirdupois, of cement.

Quantities of asphalt cements, liquid asphalt materials and other bituminous cements normally shipped in tank cars or tank trucks, when they are to be paid for by the gallon (U.S. Standard) or by the ton, will be determined from volume computations of the materials when at a temperature of 60 degrees F., with standard recognized correction

factors applied when the materials are measured at any temperature other than 60 degrees F. Net certified scale weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when bituminous material has been lost from the car or the distributor, wasted or otherwise not incorporated in the work. When bituminous materials are shipped by truck or transport, net certified weights or volume, subject to correction for loss or foaming, may be used for computing quantities.

Weights of metals and of metallic coating will be determined on the basis set forth in the Specification under which their use is required.

Scales--When the Contract calls for materials which are to be measured by weighing on scales, suitable scales shall be provided and materials transported to scales at no expense to the Owner. Before use of scales is commenced, and as frequently thereafter as the Engineer may deem necessary to ensure accuracy, the scales shall be examined by an official of the State Sealer of Weights and Measures, and all costs resulting therefrom shall be borne by the Contractor. The scales shall be maintained in accurate condition at all times.

The Contractor shall furnish and so locate scales that the amount of hauling involved in the delivering of materials is no greater than if no weighing were required; if not, whatever extra hauling is required shall be at no cost to Owner. If hauling of materials is to be paid for as a separate pay item, the pay distance shall be via the most direct practicable route and no allowance will be made for any extra hauling required to reach the scales.

If material is weighed on a public scale, a representative of the Owner may be present to witness the weighing and to check and compile records of scale weights.

#### 109.02 Scope of Payment

Quantities listed in the proposal do not govern final payment. These quantities are estimates only for purposes of obtaining competitive bids. Payments to the Contractor will be made only for actual quantities of Contract items performed in accordance with terms of the Contract and for items of work actually performed as Extra Work or under supplemental agreement in accordance with the terms of the Contract.

The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, labor, tools, equipment and incidentals, excluding those specified in Subsection 104.07, necessary for performing all work under the Contract, also for all loss, damage or liability arising from the nature of the work, or from the action of the elements, subject to provisions of Subsection 106.06 or from any unforeseen difficulties which may be encountered during prosecution of the work, until final acceptance by Owner.

### 109.03 Compensation for Alteration of Contract

Unless changes and alterations in Plans or Quantities, Contract Documents, or details of construction materially change the character of work to be performed or unit costs thereof, Contractor shall accept as payment in full, so far as Contract items are concerned, payment at the same unit prices as are provided under the Contract for accepted quantities of work done. If the work involved is measured on a lump sum basis, the adjustment of the lump sum for the increases or decreases shall be as specifically set forth in the applicable section of these Standard Specifications.

If, however, the character of work or unit costs thereof are materially changed, pursuant to Subsection 104.05, compensation for such work will be made on such basis as may have been agreed to in advance of the performance of work, or in case no such basis has been previously agreed upon, then an allowance may be made, either for or against the Contractor, in such amount as the Engineer may determine to be fair and equitable.

### 109.04 Eliminated Items

Engineer shall have the right to eliminate, omit or cancel (herein collectively termed elimination) portions of the Contract Documents relating to construction of any items or part of any item by payment to the Contractor of a fair and equitable amount covering all items of actual costs incurred directly in connection with eliminated work and prior to the date of elimination of work by order of the Engineer. Where practicable, work completed before elimination shall be paid for at unit prices, otherwise Contractor will be allowed a profit percentage on materials used and construction work actually performed at rates as provided in Section 109.06 for force account work, but no allowance will be made for anticipated profits. Acceptable materials ordered by Contractor, delivered to the work site, or properly stored at sites approved by the Engineer prior to date of elimination of work by order of Engineer may be purchased from Contractor by Owner at actual cost, and thereupon shall become the property of Owner.

### 109.05 Payment for Extra Work

Extra work shall be paid at prices agreed upon between Contractor and Owner, but in no event exceeding unit prices established in the Contract.

When such order pertains to work of a class or classes for which no unit prices are established, then the agreed adjustment shall be based either on unit prices decided on fair and equitable grounds or shall be a lump sum similarly decided, as Owner may determine, or such work may be done as Extra Work at force account. In no case shall any claim for Extra Work be made unless ordered as such.

#### 109.06 Payment for Force Account Work

Whenever the Contractor is directed by written notice from the Engineer as the Owner's representative, to perform extra work on a time and material basis, the Contractor shall furnish labor, equipment, and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual necessary expense of the following:

- a) Field and office labor, including estimating and procurement personnel and foremen, who are directly assigned to the time and materials work (actual payroll cost, including wages, fringe benefits as established by law). The cost of labor shall include any employer payments to or on behalf of the worker for health and welfare, pension, vacation and similar purposes. Where subsistence and travel allowances are required for performance of extra work, the charges shall consist of the actual amount paid to each worker. No other fixed labor burdens will be considered unless approved in writing by the Owner.
- b) Material delivered and used on the designated work, including sales tax, if paid by the Contractor or his subcontractor.
- c) Rental, or equivalent rental cost of equipment, including necessary transportation, for items having a value in excess of \$100. When equipment is not rented, the equivalent rental cost of equipment shall be based on the standard rental rates for Contractor-owned equipment, but in no event shall exceed the rental rates set forth in the "Rental Rate Blue Book for Construction Equipment" and the "Rental Rate Blue Book for Older Construction Equipment" which are published by the Equipment Guidebook Company, P.O. Box 10113, Palo Alto, CA 94303. For equipment not listed in said document, the rental rate shall be as listed by the local section of the Associated General Contractors. If the equipment is not listed by the Associated General Contractors, the rental rate will be mutually agreed upon in writing between the Contractor and Owner prior to the use of said unlisted equipment. The reasonable cost of moving equipment onto and off the job site shall be included, but equipment rental shall not be paid when the equipment is inoperative due to breakdowns. Individual pieces of equipment or small tools having a replacement value of \$100 or less shall be considered as included in the overhead allowance and no additional payment therefor shall be made.

When equipment is used on the extra work for less than five (5) days, hourly rates shall be used. Less than thirty (30) minutes of operation shall be considered ½ hour of operation. When equipment is used on the extra work for more than five (5) days, weekly rates shall apply. In this case, less than four (4) hours of operation shall be considered to be ½ day of operation.

Rental or equivalent rental costs will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment shall be understood to cover all fuel, supplies, repairs, and renewals.

The Owner reserves the right to furnish such materials and equipment as he deems expedient, and the Contractor shall have no claim for profit or added fees on the cost of such materials and equipment.

- d) One percent (1%) for additional bond, when required and approved by the Owner.
- e) Additional insurance (other than labor insurance) as required and approved by the Owner.
- f) Professional services shall be included in "actual necessary expense" only when the Owner has determined that such services are necessary and the provision of such services has been authorized in advance in writing by the Engineer.

To the preceding actual necessary expenses, there shall be added the following fixed fees for either the Contractor or subcontractor actually executing the work:

A fixed fee of 20 percent (20%) of the cost of Item a

A fixed fee of 15 percent (15%) added to the cost of Items b and c

A fixed fee of 6 percent (6%) added to the cost of Items d and e

A fixed fee of 10 percent (10%) added to the cost of Item f

An additional fixed fee of 10 percent (10%) shall be allowed the Contractor for the administrative handling of portions of the work that are executed by an approved subcontractor. No additional fixed fee will be allowed for the administrative handling of work executed by a subcontractor of a subcontractor, unless by written permission from the Owner.

The added fixed fees shall be full compensation for the cost of general supervision, overhead, profit, and any other general expense.

If a dispute occurs over payment for work provided on a time and material basis, the dispute shall not be cause for stopping work.

The Contractor shall maintain accurate records for all work performed on a time and material basis. These records will reflect all the actual necessary expenses pertaining to the extra work and shall at all times be available for audit by the Owner.

The Contractor's records shall make clear distinction between the direct costs of work paid for on a time and materials basis and the costs of other work. The Contractor shall furnish the Engineer report sheets in duplicate of each day's work. The daily report sheets shall itemize the labor, materials and equipment used. The daily report sheets shall provide names or identifications and classifications of workers, the hours worked, the sizes, types, and identification numbers of equipment, and hours operated. Daily report

sheets shall be signed by the Contractor or his authorized agent and verified by the Engineer.

To receive partial payments and final payment for time and materials work, the Contractor shall submit to the Engineer in a manner approved by the Engineer, detailed and complete documented verification of the Contractor's and any of his subcontractor's actual costs incurred. Material and rental charges shall be substantiated by copies of vendors' invoices. Such costs shall be submitted within thirty (30) days after said work has been satisfactorily completed.

#### 109.07 Progress Payments and Retainage

Payments for all work under the Contract will be made at the price or prices bid therefore, and those prices shall include full compensation for all incidental work.

Once before the first payment and each time the prevailing wage rates change, and once before final payment is made, Contractor shall supply and file with Owner a statement in writing under oath, in form prescribed by the State Labor Commission and which conforms with ORS Chapter 279, certifying the hourly rate of wages paid each classification of workman not exempt by statute who is employed upon such project and further certifying that no workman employed has been paid less than minimum prevailing wage rate. Each Subcontractor who performed work on the project during the period covered by the payment may be required to file with Owner a similar statement which covers its workmen.

Progress estimate of work performed in any calendar month will be made by the Engineer before the last week of that month. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and may be approximate only, may relate to the cost schedule mentioned herein, and shall be based upon the whole amount of money that will become due according to terms of the Contract when project has been completed. The Engineer may in special circumstances include in progress estimates up to eighty-five percent of the cost of Contractor of materials delivered to the site, properly stored, protected from damage and insured, provided that after any such payment such materials must be used in the particular project; Engineer may require receipted invoices prior to payment.

If the Contract price is determined, in whole or in part, on a lump sum basis, Contractor shall prepare an estimated cost schedule relating thereto and have Engineer approve same before commencing work; progress estimates based on said estimated cost schedule shall be the basis for progress payments.

If Contract price is determined wholly on a unit basis, Engineer may use unit prices bid by Contractor in making progress estimates on the work. In case said unit prices do not, in the opinion of the Engineer, truly represent actual relative costs of different parts of work, he may use a percentage of the unit price in making progress estimates.

Progress payment will be made by Owner on a monthly basis no later than the 20th day of the subsequent month of work performed, except that, additional days may be required when a payment is accompanied by one or more of the following: an extension of completion time, change order or extra bill. Payment may be made via use of checks or warrants at the option of Owner for the amount of the approved estimate, less retainage.

The Owner shall retain five percent (5%) of the amount earned on all progress payments. Monies retained will be released to Contractor following official acceptance of the project by the City Council of the City of Springfield. The City Engineer may recommend early release of partial retainage if all work is completed.

The City shall comply with ORS Chapter 279.420 (4) which states that if the Contractor elects, the retainage as accumulated shall be deposited by the City in an interest-bearing account in a bank, trust company or savings association for the benefit of the City. Interest earned on such an account shall accrue to the Contractor.

If Contractor fails to complete the project within the time limit fixed in the Contract or any extension thereof, no estimate may be accepted for progress or other payments allowed thereafter until the project is completed.

The making of progress payments shall under no circumstances be construed as an acceptance of any of the work or materials under the Contract.

#### 109.08 Allowance for Materials Left on Hand

Materials delivered to the work or acceptably stored at approved sites at the order of the Engineer, but left unused due to changes in plans ordered by the Engineer, will, if not practicably returnable for credit, be purchased from the Contractor, at actual cost without percentage allowance or profit.

The Contractor, or Contractor's surety, shall provide the Owner with immediate and peaceful possession of all materials purchased by the Owner.

Responsibility for excess materials delivered to the work or stored at storage sites without authority from the Engineer will rest with the Contractor. Any allowance that may be made to the Contractor for such excess materials will be under conditions and prices acceptable to the Engineer.

#### 109.09 Deferment of Payments

No partial or final payment will be made until all orders made by Engineer to Contractor in accordance with the Specifications are compiled with, or until all claims or liens filed or prosecuted against Owner, its officer or employees contrary to provisions of the Contract are satisfied. Special attention is given to Subsection 401.4.07.

In the event a complaint or charge of unlawful employment practices pursuant to the

provisions of ORS Chapter 659 is filed against the Contractor by anyone, including the Owner, and the Commissioner of Labor issues a cease and desist order as defined in ORS Chapter 659, no further payments will be made on the Contract until such time as all of the provisions of the cease and desist order have been complied with by Contractor.

#### 109.10 Final Estimate and Payment

Pursuant to ORS Chapter 279, the Engineer shall be notified when work is considered complete and Engineer shall, within fifteen (15) days after receiving notice, either accept the work or notify Contractor of work yet to be performed on the Contract. If accepted, Engineer shall so notify Contractor, and will make a final estimate and recommend acceptance of the work as of a certain date. Upon approval and acceptance by Owner, Contractor will be paid a total payment equal to the amount due under the Contract including all retainage.

Before final payment is made under the Contract, Contractor shall supply and file with the Owner a statement in writing which complies with ORS Chapter 279 and under oath as heretofore set forth, certifying the hourly rate of wage paid each nonexempt classification of workmen employed by him upon such a project. Each Subcontractor who performed work on the project may be required to file with Owner a similar statement which covers its workmen.

As a further prerequisite to final payment, Contractor shall execute and deliver to Owner, in form approved by the Attorney, a receipt for all amounts paid or payable to Contractor under the Contract, and a release and waiver of all claim against Owner growing out of, or connected with, the Contract and furnish satisfactory evidence that all amounts due for labor, materials and other obligations under the Contract have been fully and finally settled or are fully covered by insurance protecting Owner, its officers, agents and employees as well as Contractor.

If Owner declares a default of the Contract, and Surety completes said Contract, all payments after declaration of default and retainage held by Owner shall be paid to Surety and not to Contractor in accordance with terms of the Contract.

#### 109.11 Acceptance of Final Payment

Acceptance by Contractor of final payment shall release Owner and Engineer as agent of Owner from all claims and all liability to Contractor for all things done or furnished in connection with the work, and every act of Owner and others relating to or arising out of the work. No payment, however, final or otherwise, shall operate to release Contractor or his Sureties from obligations under the Contract and the performance, payment, and other bonds and warranties, as herein provided.