

DIVISION 1 – GENERAL REQUIREMENTS

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DIVISION 1 GENERAL REQUIREMENTS

101 APPLICATIONS, DEFINITIONS, AND ABBREVIATIONS

101.01.00 APPLICABILITY OF THE STANDARD CONSTRUCTION SPECIFICATIONS

The standard construction specifications and standard details contained herein shall apply to the construction and maintenance of all public improvement projects that ultimately will be owned, operated, or maintained by the City of Albany. Private construction firms, developers, City crews, or any other individuals or business entities engaged in the construction of improvement projects that ultimately will be owned, operated, or maintained by the City of Albany shall comply in every respect with these specifications and any applicable requirements or revisions that may be included in the contract documents for a particular improvement.

101.02.00 APPLICABILITY OF DIVISIONS

Division I contains definitions and abbreviations used throughout these specifications. In addition, it provides one of the processes by which the owner contracts with the private sector for the construction of capital improvements.

Division II contains the general technical requirements for all capital improvements that are to be operated and maintained by the owner.

Division III contains specific requirements for the construction of streets that are to be operated and maintained by the owner.

Division IV contains specific requirements for the construction of sanitary sewers and storm drains that are to be operated and maintained by the owner.

Division V contains specific requirements for the construction of water distribution systems that are to be operated and maintained by the owner.

Division VI contains specific requirements for the construction of post-construction stormwater quality systems that are to be operated and maintained by the owner.

In general, command-type sentences are used throughout these standard specifications. In all cases the command expressed or implied is directed to the contractor.

The specifications contained herein are divided into three categories:

(1) division; (2) section; and (3) subsection, and are formatted in the following example:

(1) Division: **DIVISION 1 GENERAL REQUIREMENTS**

(2) Section: **102 PROPOSAL REQUIREMENTS**

(3) Subsection: 102.03.02 PROPOSAL GUARANTEE AND SIGNATURE

Subsection: 102.03.02A PROPOSAL GUARANTEE

101.03.00 DEFINITIONS

Unless otherwise defined in the contract documents, the following definitions and abbreviations shall apply wherever used.

Acceptance of Work

Work required by the contract documents will be considered accepted upon approval of the final payment by the Albany City Council.

Addenda

Requirements added to the scope of work or additional clarifications of the work or contract documents subsequent to advertisement for bids and prior to the bid opening.

Advertisement

The public announcement inviting bids for work to be performed or materials to be furnished; synonymous with “invitation to bid.”

Approved or Approval

Acceptance, given to the contractor by the City Engineer, for specific materials, construction or manufacturing processes, changes in contract conditions, or any other items to be used in the work.

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 solely by the City Engineer.

Attorney

The City Attorney of the City of Albany, Oregon.

Bid Security

The security (bond, cash, certified check) required to be submitted with each proposal that assures that the bidder will enter into a contract upon acceptance of the submitted proposal.

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 in the contract documents.

Change Order

A written order, approved by owner and issued by City Engineer to the contractor, covering changes in the contract documents or other conditions within the scope of the contractual documents.

City

The City of Albany, Oregon, an Oregon municipality.

City Engineer (Engineer)

The City Engineer, or any authorized city staff or designee 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.

Code

The City of Albany Municipal Code and any other federal, state, county, or local codes, laws, or regulations affecting the work.

Contract

A part of the contract documents executed by the owner and the contractor that binds the owner and contractor to the stipulated work to be performed. In circumstances in which a contractor is constructing public improvements through private development the contract shall mean the provisions of the Site Improvement permit, Encroachment permit, or other mechanism under which the work has been authorized by the City.

Contract Cost

The aggregate amount promised to be paid by owner to contractor upon fulfillment of the contract.

Contract Documents

The contract, authorizing ordinance, the advertisement calling for bids, the proposal, drawings, all specifications, schedule of contract prices, addenda, permits, payment and performance bonds, insurance certificate, and change orders for any approved revisions made during the performance of the work to any of the above listed documents.

Contract Item

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

Contractor

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

Day

Calendar day, any and every day shown on the calendar.

Developer

Any individual, partnership, corporation, joint venture, or other legal entity in the primary business of developing real property.

Drawings

The official construction drawings included in the contract documents, which may include some or all of the following: profiles, cross sections, elevations, details, and other working, supplementary, and detail drawings, or reproductions thereof, that show the location, character, dimensions, and details of the work to be performed.

Construction drawings are signed by the City Engineer. Drawings may either be bound in the same book as the balance of the contract documents or bound in separate sets and are a part of the contract documents, regardless of the method of binding.

Domestic Manufacture

The creation within the United States of America of parts, components, appurtenances, or other system constituents by any means of generation.

Easement

The right to use a defined area of property for a specific purpose or purposes.

Engineer's Report

A report prepared by the Public Works Director informing the Albany City Council of the status, viability, or need relating to a particular improvement project and making specific recommendations concerning the project.

Final Completion

The date at which the work, and all related aspects of the work, has progressed to the point where, in the opinion of the City Engineer, all requirements of the contract documents have been met; all construction equipment and unused materials have been removed; all waste has been removed and the project area thoroughly cleaned and restored; and the project is 100 percent complete in every respect and can be utilized for the purpose for which it was intended.

Force Account Work

Force account work is extra work that is not covered under unit-price or lump-sum items in the contract documents and where negotiated price or prices have not been agreed upon.

Foreign Contractor

Contractor who is not domiciled in or registered to do business in the state of Oregon.

Improvement

General term encompassing all phases of the work to be performed under the contract; synonymous with the term "project."

Invitation to Bid

The public announcement inviting bids for work to be performed or materials to be furnished; synonymous with the term "advertisement."

Lump Sum

A method of payment providing for one, all-inclusive total cost 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.

MUTCD

Manual of Uniform Traffic Control Devices published by the U.S. Department of Transportation.

Notice

A written communication delivered by hand, mail, or e-mail to an individual, authorized member of a firm, or officer of a corporation for which it is intended. If delivered or sent by mail, it will be addressed to the last known address of the individual, firm, or corporation.

Oregon Standard Specifications for Construction

The latest edition of the specification document published by the state of Oregon entitled *Oregon Standard Specifications for Construction*. This document is available from the Oregon Department of Transportation, Salem, Oregon.

Owner

The City of Albany, acting through its legally constituted City Council.

Performance and Payment Bond

The bond submitted by the contractor and the contractor's surety as specified in the contract documents.

Public Works Department

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

Project

General term encompassing all phases of the work to be performed under the contract; synonymous with the term "improvement."

Pronouns (Use of)

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, firm, co-partnership, corporation, or association, or combination thereof.

Proposal

The written offer of a bidder that is the basis of the contract cost to perform stated work at prices quoted and submitted on owner's official proposal form.

Proposal Guarantee

The security furnished with a proposal to ensure that the bidder will enter into a contract upon acceptance of the proposal.

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, that are in effect and published at the time of advertising for bids or of issuing the permit, unless specifically referred to by edition, volume, or date.

Resident Bidder

Resident bidder is as defined in ORS 279A.120.

Right-of-Way

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

Roadway

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

Shall

An auxiliary word used to express a command in the contract documents describing a specific requirement or course of action that is required of the contractor.

Shop Drawings

Supplementary drawings or data that the contract requires the contractor to submit to the City Engineer.

Shown

As used herein, the word “shown” or “as shown” shall be understood to refer to work depicted on the drawings in the contract documents.

Special Provisions

Requirements unique to the project that may include changes and modifications of the standard construction specifications.

Specifications

Synonymous to the term “standard construction specifications.”

Specified

As used herein, the word “specified” or “as specified” means as required by the contract documents.

Standard Details

Details of structures, devices, or instructions adopted by owner as a standard and included as a permanent part of the standard construction specifications.

Standard Construction Specifications

The terms, directions, provisions, and requirements set forth herein, including the standard details.

Street

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

Subcontractor

An individual, partnership, firm, corporation, or other legal entity entering into a contract with the contractor to perform a portion of the work.

Supplemental Agreements

Agreements made between the owner and other governmental agencies, utility companies, or other entities that are included in the contract documents and affect some aspect of the work.

Ton

The short ton of 2,000 pounds avoirdupois.

Unit Price

A method of payment for a contract item of work based on a specific unit of measurement as indicated in the proposal.

Utility

Railroad tracks, utility poles, overhead or underground wires, pipelines, conduits, ducts, or structures owned, operated, or maintained in or across a right-of-way or easement.

Warranty

The contractor's responsibility to the City for the repair or replacement of defective materials and/or workmanship relative to the work or a portion or a component part thereof.

Will

Used in the contract documents as an auxiliary verb to express a determination to meet a specific requirement or to take a specific course of action or to describe the inevitable.

Work

All material, labor, equipment, transportation, and appurtenances necessary to perform and complete the contract and such additional items not specifically indicated or described that 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.

Working Day

Any and every day shown on the calendar with the exception of Saturdays, Sundays, and legal holidays.

101.04.00 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
MUTCD	Manual of Uniform Traffic Control Devices
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NLMA	National Lumber Manufacturer's Association
ODOT	Oregon Department of Transportation
ORS	Oregon Revised Statutes
OSHA	Occupational Safety and Health Administration
PCA	Portland Cement Association
UBC	Uniform Building Code
UL	Underwriters' Laboratories, Inc.
USASI	United States of America Standards Institute

102 PROPOSAL REQUIREMENTS

102.01.00 FACSIMILE TRANSMISSIONS

Documents sent to the City by means of facsimile machines, or by means of other present or future technology not specifically accepted by the owner, will not be accepted for the submission, replacement, or modification of any document that requires an original signature.

102.02.00 EQUAL EMPLOYMENT OPPORTUNITY

The attention of bidders is directed to the provisions of Oregon law concerning unlawful employment practices. Violation of such provisions may be grounds for immediate termination of the contract.

It is the policy of the City of Albany to promote equal opportunity to all persons in matters affecting, but not limited to: Recruitment, employment, compensation, benefits, promotions, training, discipline, transfer, and layoff practices without regard to a person's race, color, religion, national origin, disability, sex, or age (except where sex, age, or non-disability are bona fide occupational qualifications). This policy extends to all contractors receiving public money for the fulfillment of public contracts with the City of Albany.

102.03.00 BID PROPOSAL

102.03.01 PREPARATION AND SUBMITTAL OF PROPOSAL

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

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 bid signed by the contractor or a duly authorized agent. Any statement accompanying and tending to qualify a bid may cause rejection of such bid, unless such statement is required in a proposal embracing alternative bids.

Bidders shall bid on all bid items included in the proposal. Proposals that are incomplete, conditional, or fail to reply to all items required in the proposal may be rejected.

The bidder shall enclose the proposal, bid bond, certified check, or cashier's check, in a sealed, labeled, and addressed envelope as required in the invitation to bid and file as required therein. The outside of the envelope shall plainly identify: (1) The project name, (2) the bid opening time and date, and (3) the bidder's name.

102.03.02 PROPOSAL GUARANTEE AND SIGNATURE

102.03.02A PROPOSAL GUARANTEE

Proposals shall be accompanied by a proposal guarantee in the form of a certified check or cashier's check payable to the order of the owner, or a bidder's bond for the single bid submitted, in an amount of at least 10 percent of the amount of the proposal. Such proposal guarantee shall be forfeited in case the successful bidder shall fail or neglect to furnish a performance and payment bond and insurance, if required, and to execute the contract within 10 days after receipt of said contract from the owner for execution.

102.03.02B PROPOSAL SIGNATURE

The bidder shall state whether business is being done as an individual, a co-partnership, a corporation, or a combination thereof and, if incorporated, in what state and, if a co-partnership, the names of all partners. The position of the person signing on behalf of a corporation, a co-partnership, or combination thereof shall be stated and whether the corporation is licensed to do business in the state of Oregon. A corporation requires the signatures of two corporate officers.

102.03.03 WITHDRAWAL, MODIFICATION, OR ALTERATION OF PROPOSAL

Once submitted, bids may be modified in writing prior to the time and date set for bid closing. Any modifications shall be prepared on the company letterhead, signed by an authorized officer, and state that the new document supersedes or modifies the prior bid. To ensure the integrity of the bidding process, the envelope containing any modifications to a bid shall be clearly marked as follows: (1) BID MODIFICATION, (2) the project name, (3) the bid opening time and date, and (4) the bidder's name.

Bids may be withdrawn by written notification on company letterhead signed by an authorized officer and received prior to the time and date set for bid closing. Bids also may be withdrawn in person prior to the scheduled bid closing upon presentation of appropriate identification. Unopened bids, withdrawn as specified above, may be released to the bidder after voiding any date and time stamp used. Envelopes containing written requests to withdraw bids shall be clearly marked as follows: (1) BID WITHDRAWAL, (2) the project name, (3) the bid opening time and date, and (4) the bidder's name.

Prior to bid opening, changes may be made provided changes are initialed by the bidder or authorized agent. If the intent of the bidder is not clearly identifiable, the interpretation most advantageous to owner, as determined by the owner, will prevail.

102.03.04 LATE PROPOSALS

Proposals, modifications, and withdrawal requests received after the scheduled closing time for filing bids, as set forth in the invitation to bid, will be rejected and returned unopened to the bidder unless such closing time is extended by owner.

102.03.05 RESIDENT BIDDERS

Bid documents must contain a statement as to whether the bidder is a resident bidder as specified in ORS 279A.120.

102.04.00 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 from data actually known by the staff of the office of the Public Works Department, Engineering Division. 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.

102.05.00 INTERPRETATION OF CONTRACT DOCUMENTS

If it should appear to a bidder that the work to be done or matters relative thereto are not sufficiently described or explained in the contract documents or that contract documents are not definite and clear, the bidder shall make written inquiry regarding same to the City Engineer, at least seven days before the scheduled closing time for filing bids. Then, if in the judgment of the owner, additional information or interpretation is necessary, such information will be supplied in the form of an addendum to all individuals, firms, and corporations who have taken out 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.

102.06.00 ADDENDA TO CONTRACT DOCUMENTS

Neither the owner nor the City Engineer will give verbal answers to inquiries regarding the meanings of drawings and specifications or verbal instructions previous to the award of the contract. Any explanation desired by bidders must be requested from the owner or City Engineer in writing; and if explanation is necessary, a reply will be made in the form of an addendum, a copy of which will be forwarded to each bidder who has received a set of contract documents.

All addenda issued to bidders prior to date of receipt of proposals shall become a part of the contract documents and all proposals are to include the work therein described. Each proposal submitted shall list, by

number, all addenda that have been received prior to the time scheduled for receipt of proposal. Any proposal that is not in compliance with this section and/or does not include a listing of all addenda listed may be rejected.

102.07.00 FAMILIARITY WITH LAWS AND ORDINANCES

The bidder is presumed to be familiar with federal, state, and local laws, ordinances, and regulations that in any manner affect those engaged or employed in the work or the materials or equipment used in the proposed construction, or that in any way affect the conduct of the work; and no plea of misunderstanding will be considered on account of ignorance thereof. If the bidder, or contractor, shall discover any provision in the contract documents that is contrary to or inconsistent with any law, ordinance, or regulation, such discrepancy shall be reported immediately to the owner in writing.

102.08.00 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 a 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 performed or materials furnished according to actual measurement.

102.09.00 BID PRICES TO COVER ENTIRE WORK

Bidders must include in their bid prices the entire cost of each item of the work set forth in the proposal; and when, in the opinion of the City Engineer, the prices in any proposal are obviously unbalanced, such proposal may be rejected by the owner.

102.10.00 ACCEPTANCE OR REJECTION OF PROPOSAL

Owner reserves the right to accept or reject any or all bids, in whole or in part, or waive irregularities as the best interests of the City may require.

103 AWARD AND EXECUTION OF CONTRACT

103.01.00 AWARD OF CONTRACT

The award will be made by owner to the responsible bidder submitting the lowest acceptable bid. In determining the lowest acceptable bid, among other factors, the owner may take into account the prices bid, discounts, if any, time of completion or delivery proposed; as between equal bids, the relative merits and performance of any item specifically proposed by the bidder, any variation in maintenance and guarantee period specially proposed by the bidder in excess of any minimums 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.

The owner reserves the right to reject any or all bids in its own best interests.

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

Determination of the lowest acceptable bidder and award are subject to review and determination by the City Attorney as to legal sufficiency of any bid submitted.

If awarded, award and tender of contract will be according to ORS 279C.375.

103.02.00 EXECUTION OF CONTRACT

The bidder to whom award is made shall execute and return the contract in the required number of copies and shall furnish a performance and payment bond and other required bonds and insurances satisfactory to owner within 10 days after notice of award. Bidder shall execute at least one copy of the contract as the original, or

any number of copies as originals as required by owner; one original shall remain in the possession of owner. It shall be the bidder's responsibility to confirm the accuracy and completeness of all copies of the contract submitted by the owner to the bidder for signature.

The federal tax identification number or social security number of the successful bidder shall be supplied to the owner.

103.02.01 FAILURE TO EXECUTE CONTRACT

Failure on the part of the successful bidder to execute and deliver the contract, required performance and payment bond, and the required insurance shall be just cause for cancellation of the award, withdrawal of the contract, and forfeiture of the proposal guarantee. The forfeited proposal guarantee shall become the property of the owner, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest acceptable bidder; or the work may be readvertised, or otherwise, as the owner may decide.

103.03.00 RETURN OF PROPOSAL GUARANTEE

The owner reserves the right to retain the bid security of the three lowest bidders until the successful bidder has signed and delivered the contract and furnished the required bonds and insurance certificates.

103.04.00 SUBCONTRACTING LIMITATIONS

The contractor's own organization shall perform contract work amounting to at least 40 percent of the original total contract amount which shall be defined as the sum of the amounts computed by multiplying the bid item quantities by the unit price in the schedule of contract prices of the contract as awarded.

The term "own organization" includes only workers employed and paid directly by the contractor and using equipment owned or rented by the contractor. It shall also include materials and manufactured products that are purchased or produced by the contractor.

103.04.01 TRANSFER OF CONTRACT AND INTERESTS THEREIN

Transfer of the contract or any interest therein to any other party or parties shall not be made 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 contractor 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, nor any person employed in its service, is or shall be permitted any share or part of the contract or shall be entitled to any benefit that may arise therefrom. Assignment of any of the monies payable under the contract or claims thereto shall not be made without the prior written approval of owner.

Any assignment of money shall be subject to all proper offsets 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.

103.05.00 PERFORMANCE AND PAYMENT BOND

At the time of execution of the contract, the contractor shall furnish performance and payment bond or bonds approved by the owner and City Attorney in an amount equal to the amount of the contract based upon the estimate of quantities or lump sum as set forth in the proposal, conditioned upon a 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.

103.06.00 PROOF OF CARRIAGE OF INSURANCE

Work shall not commence until all insurances required in the contract have been obtained and a certificate thereof has been approved by the City Attorney. The contractor shall maintain insurance throughout the life of the contract that will hold owner harmless and shall indemnify owner and City Engineer for any and all losses to third persons or to owner arising out of the operations, including any contingent liability arising therefrom.

103.07.00 NONRESIDENT CONTRACTOR

When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, under provisions of ORS Chapter 279A.120(3), the bidder shall promptly report to the Department of Revenue and the owner on forms to be provided by the department, the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. The contracting agency shall satisfy itself that the requirement of this subsection has been complied with before the contracting agency issues a final payment on a public contract.

104 SCOPE OF WORK

104.01.00 CONTRACT DOCUMENTS

The contract documents, which include the standard construction specifications, special provisions, drawings, and any other pertinent specifications, permits, regulations, and requirements unique to the project, will govern the work to be done. When a particular specification, regulation, or requirement is referred to in the contract documents, such reference shall be to current revisions or amendments, if any, that are in effect at the time of advertising for bids.

Anything mentioned in the special provisions and not shown on the drawings and standard details; or shown on the drawings, and not mentioned in the special provisions or shown on a standard detail; or shown on a standard detail, and not mentioned in the special provisions or shown on the drawings, shall be of like effect as though shown or mentioned in all three. Specifications, drawings, and standard details referred to in any of the contract documents shall be considered as being included in the document in which such reference is made.

104.01.01 PRECEDENCE OF CONTRACT DOCUMENTS

In case of conflict, the order of precedence of the following documents in controlling the work shall be:

- (1) Addenda, change orders, and supplemental agreements
- (2) Contract
- (3) Proposal
- (3) Permits from outside agencies required by law
- (4) Special provisions
- (5) Drawings
- (6) Standard details
- (7) Standard construction specifications
- (8) Reference specifications

In case of any ambiguity or dispute over interpretation of the provisions of the contract, the decision of the City Engineer will be final.

104.02.00 SHOP DRAWINGS

The contractor shall supply and bear the cost of any shop drawings required in connection with the prosecution or construction of any part of such work.

The contractor shall submit to the City Engineer for review, in quadruplicate, such shop drawings, electrical diagrams, and catalog cuts for fabricated items and manufactured items (including mechanical and electrical equipment) required for the construction. Shop drawings shall be submitted in sufficient time to allow the City Engineer not less than 14 days for examination.

These shop drawings shall be accurate, distinct, and complete, and shall contain all required information, including satisfactory identification of items, units, and assemblies in relation to the drawings and specifications.

Shop drawings shall be submitted only by the contractor, who shall indicate by a signed stamp on the shop drawings, or other approved means, that the contractor has checked the shop drawings and that the work shown is in accordance with contract requirements and has been checked for dimensions and relationship with work of all other trades involved. The practice of submitting incomplete or unchecked shop drawings for the City

Engineer to correct or finish will not be acceptable; and shop drawings that, in the opinion of the City Engineer, clearly indicate that they have not been checked by the contractor will be considered as not complying with the intent of the contract documents and will be returned to the contractor for resubmission in the proper form.

When the shop drawings have been reviewed by the City Engineer, two sets of submittals will be returned to the contractor with remarks relative to acceptance or rejection of the drawings. If major changes or corrections are necessary, the shop drawings may be rejected and one set will be returned to the contractor with such changes or corrections indicated and the contractor shall correct and resubmit the shop drawings in quadruplicate. No changes shall be made by the contractor to resubmitted shop drawings other than those changes indicated by the City Engineer, unless such changes are clearly described in a letter accompanying the resubmitted shop drawings.

The review of such shop drawings and catalog cuts by the City Engineer shall not relieve the contractor from responsibility for correctness of dimensions, fabrication details, and space requirements, or for deviations from the drawings or specifications, unless the contractor has called attention to such deviations in writing by a letter accompanying the shop drawings and the City Engineer approved the change or deviation in writing at the time of submission; nor shall review by the City Engineer relieve the contractor from the responsibility for errors in the shop drawings. When the contractor does call such deviations to the attention of the City Engineer, the contractor shall state in writing whether or not such deviations involve any deduction or extra cost adjustment.

104.03.00 CHANGES IN THE WORK

104.03.01 CHANGES REQUESTED BY THE CONTRACTOR

Changes in the contract documents requested in writing by the contractor, that do not materially affect the work and that are not detrimental to the work or to the interests of the owner, may be made to facilitate the work when approved in writing by the City Engineer.

If such changes are granted, they shall be made at a reduction in cost or at the contractor's sole expense. Nothing herein shall be construed as granting a right to the contractor to demand acceptance of such changes.

104.03.02 CHANGES INITIATED BY THE OWNER

Owner may at anytime, by written order, and without notice to the sureties, unless such change exceeds 25 percent of the original contract amount, make changes in the contract documents. If such changes cause an increase or decrease in the amount due under the contract, or in the time required for its performance, adjustment may be made and the contractor will be notified accordingly by written change order. The contractor shall make any claim under this subsection in writing within 10 days from the date of postmark of the notification of change. Nothing provided herein shall excuse contractor from proceeding with the prosecution of the work as changed. Except as otherwise herein provided, no charge for extra work or material will be allowed.

104.04.00 CHANGED CONDITIONS

If, subsequent to the contractor's bid submittal, changes in the work site occur that necessitate additional work not provided in the contract, the contractor shall notify the City Engineer in writing prior to disturbing said changes in the work site. The contractor may submit a claim for extra compensation for such additional work. Such a claim shall be submitted, in writing, to the City Engineer within 10 days of discovery of the changed condition. If the claim is not submitted within such 10-day period, contractor will be deemed to have waived any right to extra compensation for additional work.

If the owner or City Engineer determines the conditions to be such as to justify a claim for additional compensation, the compensation may be provided in the form of additional payment for the particular phase of work in question, or by any other equitable arrangement mutually agreeable to owner and contractor.

Unknown or unexpected subsurface conditions, unseasonal weather conditions, utility locations, or other job site conditions that have not changed since contractor's bid submittal shall not be considered changed conditions under this paragraph; and encountering such condition shall not entitle contractor to extra compensation.

104.05.00 EXTRA WORK

Owner shall have the right to require and contractor hereby 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, that is reasonably necessary to accomplish the intent 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 City Engineer.

In giving instructions, the City Engineer may order minor changes in the work not involving extra cost and not inconsistent with the purposes of the work. Otherwise, except in an emergency endangering life or property, extra work shall be performed only in pursuance of a written order from the City Engineer stating that the owner has authorized the extra work. No claim for additional payment shall be valid unless so ordered.

104.06.00 FORCE ACCOUNT WORK

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 costs of other operations paid for under unit prices in the contract documents.

The contractor shall submit signed daily reports to the City Engineer, in duplicate, for extra work to be paid for on a force-account basis. Work shall be itemized as follows: (1) Costs of materials used in the work shall be itemized and substantiated with receipts showing quantity and cost from vendor; (2) cost of direct labor shall be substantiated by providing names, identification, and classes of workers, date and time spent performing the extra work; and (3) cost of equipment used shall be itemized by showing type, numbers, dates used, time of use, and size of equipment actually used in completing the extra work.

City Engineer's records will be compared with the reports furnished by contractor, any necessary adjustments made, and then the costs of extra work paid for on a force-account basis compiled on forms furnished by the contractor. When these extra-work reports are agreed upon and signed by both parties, they shall become the basis of payment for work performed.

104.06.01 COST OF MATERIALS

The contractor shall submit a written breakdown of material costs to the City Engineer in advance of using said materials in the work. Upon review of the proposed materials costs, the owner reserves the right to furnish such materials as the owner deems necessary to take advantage of any available cost savings.

The contractor shall substantiate material charges by submitting vendors' invoices with the daily reports or, if not available, submit with subsequent reports. In the event said vendors' invoices are not submitted within 15 days after acceptance of the work, owner reserves the 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.

105 CONTROL OF WORK

105.01.00 AUTHORITY OF THE CITY ENGINEER

Subject to such authority as is delegated by the owner, the City Engineer will decide questions that may arise as to the quantity, quality, and acceptability of materials furnished and work performed; the rate of progress of the work; interpretation of the contract documents; the measurement of all quantities; and the acceptable fulfillment of the contract on the part of the contractor. The City Engineer's estimates and decisions in these matters shall be final, binding, and conclusive upon all parties to the contract.

The authority of the City Engineer is such that the contractor shall at all times acknowledge and comply with directions from the City Engineer insofar as they concern the work not in compliance with the contract. Upon failure on the part of the contractor to comply with any provisions of the contract, the City Engineer shall have the authority to suspend work, cause unacceptable and/or unauthorized work to be remedied, removed, or replaced, or to have such work remedied, removed, or replaced by a third party, and to deduct the costs thereof from any monies due or to become due the contractor.

Approval by City Engineer signifies favorable opinion and qualified consent; it does not carry with it certification, nor assurance of completeness, quality, or accuracy concerning details, dimensions, and quantities. Such approval will not relieve contractor from responsibility for errors, improper fabrication, nonconformance to requirements, or for deficiencies within contractor's control.

Whenever in the contract documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory," or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment of City Engineer as to the work, it is intended that such requirement, direction, review, or judgment will be solely to evaluate the work for compliance with the contract documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to City Engineer any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility for contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto; and City Engineer will not be responsible for contractor's failure to perform or furnish the work in accordance with the contract documents.

The owner and/or the City Engineer will not be responsible for the acts or omissions of contractor or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work.

105.02.00 AUTHORITY AND DUTIES OF INSPECTORS

City Engineer may appoint assistants to inspect materials used and work done. Such inspection may extend to any or all parts of the work and to the preparation or manufacture of materials to be used. An inspector is placed on the work to check the necessary lines and grades and to keep the City Engineer informed of progress of the work and the manner in which it is being done and also to call the attention of contractor to any infringements upon the contract documents; but failure of the inspector or City Engineer to call the attention of the contractor to faulty work or infringements upon the contract documents shall not constitute acceptance of said work.

An inspector will not be authorized to approve, accept, or issue instructions on any portion of the work that is contrary to the contract documents. The inspector will have authority to reject defective material and to suspend any work that is being done improperly, subject to final decision of the City Engineer. The inspector will exercise such additional authority as may be, from time to time, especially delegated by the City Engineer.

105.02.01 INSPECTION BY OTHERS

Inspection of work by persons other than the City Engineer will not constitute inspection by owner.

Private laboratories and/or Engineering firms may in some cases be retained by the City to provide testing and/or inspection duties.

105.03.00 DISPUTED WORK

If any work demanded is considered by contractor to be outside the scope of the contract or any ruling by the City Engineer is considered by the contractor to be unfair, upon such work being demanded or such ruling being made, the contractor shall proceed without delay to perform the work or to conform to the ruling. Within 10 days after date of receipt of the instructions or ruling, the contractor may file a written protest with the City Engineer stating clearly and in detail the basis of objection and include an itemized statement of any claimed extra costs that may have resulted. Except for such protests or objections as are made of record in the manner herein specified and within the time limit stated, the records, rulings, instructions, or decisions of the City Engineer will be final and conclusive.

105.04.00 RESPONSIBILITY OF THE CONTRACTOR

The contractor shall do all work and furnish all labor, materials, and equipment necessary for the performance and completion of the project in accordance with contract documents and within the specified time.

Material and construction details of plants, forms, shoring, falsework, and other structures built by contractor but not a part of the permanent project, shall be the contractor's responsibility.

The contractor shall assume all responsibility for the work and bear all losses and damages directly or indirectly resulting to contractor, to 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 the defense of, indemnify, and save harmless the owner, the City Engineer, their officers, agents, 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 in any way arising out of the contract. Contractor shall not be liable for nor be required to defend or indemnify the owner relative to claims for damage or damages resulting from acts or omissions of the owner, its officers, agents, or employees.

105.05.00 NOTIFICATIONS RELATIVE TO CONTRACTOR'S ACTIVITIES

105.05.01 GENERAL

The contractor shall be solely responsible for notifying the appropriate agencies prior to commencing work, requesting on-site utility locations by phone and confirming by letter a minimum of 48 hours prior to commencing work, and adhering to notification requirements during the progress of the work where location of utilities is necessary as the work progresses.

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 may not be limited to, the time of commencement and completion of work, names of streets or location of alleys to be closed, and schedule of operations and routes of detours where possible. Other specific information may be required depending upon the nature of the work.

If the project or work there under involves the crossing of any railroad line or encroachment on any railroad right-of-way, adequate notice shall be given prior to construction as required in the contract documents.

Damages or claims resulting from improper or insufficient notification of the affected agencies shall be the responsibility of the contractor.

The contractor shall not place required notifications in U.S. Postal Service mail boxes.

105.05.02 STREET CLOSURES

In addition to other notifications, the contractor shall obtain prior approval from the City Engineer for the closing or partial closing of any street. The contractor shall give at least 48 hours advance notice of such closure to all agencies providing emergency services, including police, fire, and ambulance services.

When access to private, public, or commercial property will be denied or impaired, the contractor shall give occupants of affected properties at least 24 hours prior notice. In the absence of required notice, the contractor shall immediately undertake to provide the desired access when directed to do so by the City Engineer.

For commercial properties, in addition to the required notice, the contractor shall provide and maintain appropriate signing to advise potential customers and commercial traffic of alternate routes to the property.

105.05.03 WATER WORKS PROJECTS

Work involving existing water lines shall be scheduled in a manner that will minimize disruption of local water service. Interruption of water service shall not be scheduled to occur on a Friday or City Holiday. Scheduled interruptions of water service shall occur between the hours of 9:00 a.m. and 2:00 p.m., except as otherwise authorized by the City Engineer. The Contractor shall give written notice to each affected residential water customer a minimum of 48 hours in advance of the scheduled interruption of water service. The Contractor shall give written notice to the City and to commercial and industrial water customers a minimum of 72 hours in advance of the scheduled interruption of water service. A copy of this notice shall be presented to the City Engineer for approval prior to distribution to water users.

The notification shall include details indicating the date, time of day, and expected duration of the proposed shutdown. The notification shall also include the contractor's name, contact person's name, and phone number of the contact person. These notifications shall be delivered in person to the service address and shall be secured to the customer's primary entrance. The Contractor shall coordinate with affected businesses to ensure water service interruptions occur at times convenient for their normal operation. In some circumstances it may be necessary to schedule water shutdowns outside of normal working hours.

105.05.03A UNSCHEDULED INTERRUPTION OF WATER SERVICE

In the event that the water line is required to be out of service for a longer period than given in the original notice, or is to be taken out of service again after service was restored, the contractor shall immediately notify, in person, as many of the affected water users as possible that received the original notice.

Where water lines or hydrants are taken out of service without the required notice due to an emergency endangering life or property, the contractor shall notify, in person, the affected water users as soon as the emergency is under control.

Each situation involving a scheduled interruption of water service shall be limited to four hours unless otherwise authorized by the City Engineer. If the Contractor does not complete the work within the allotted time or for circumstances otherwise causing an unscheduled interruption of water service, mitigating circumstances notwithstanding, the Contractor shall pay to the City, not as penalty but as liquidated damages, \$225 each hour, or fraction thereof, beyond the time limit established by the City Engineer.

105.05.03B DAMAGE TO EXISTING WATER SYSTEM

In the event the Contractor's activities cause damage to any part of the existing water system, the Contractor shall immediately cease all work activities, except to make the area safe. The Contractor shall immediately notify the City of the damage and await further instruction from the City.

City forces will perform repairs to damaged water infrastructure. The Contractor shall repay costs to the City including materials, equipment, labor, and incidentals; and including costs associated with the loss of opportunity to perform work otherwise scheduled by City forces.

Liquidated damages identified in 105.05.03A shall apply.

105.06.00 PROTECTION OF WORK

Until final acceptance of the completed project by the owner, the contractor shall protect, at all times, all materials, equipment, and completed work from damage, theft, or other harm, whether it be from nature, including the action of the elements, and damage by any person or persons, or from any other cause or source whatsoever.

The contractor shall be responsible for the repair or replacement, and costs thereof, of lost or damaged materials and/or completed work when such loss or damage occurs prior to final acceptance of the project. The City Engineer will make the final determination of whether damaged materials or work shall be repaired or replaced.

105.07.00 USE OF IMPROVEMENT DURING CONSTRUCTION

Upon request and with written approval of the owner, contractor will be relieved of the duty of maintaining and protecting certain portions of work that are approved to be placed in service and that 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.

105.08.00 USE OF LIGHT, POWER, WATER, AND PROPERTY

The contractor shall provide, install, and maintain temporary lighting, power, and water service as is necessary to perform the work. Temporary services shall be removed upon completion of the work. The contractor shall

obtain all permits and bear all costs in connection with temporary services and facilities at no expense to owner and conform to applicable rules and codes in the use of these facilities.

The contractor shall not make use of existing power or water service from public or private property, or the property itself, without the written consent of the property owner. A copy of any such written consent shall be forwarded to the City Engineer prior to making use of the service.

105.09.00 SUBSURFACE DATA

Information obtained by City Engineer regarding subsurface conditions and groundwater elevations will be available for inspection at the office of the City Engineer upon request. Such information is offered as supplementary information only. Neither the City Engineer nor owner assumes any responsibility for the completeness, correctness, or interpretation of such supplementary information.

Logs of test holes, test pits, soils reports, ground water levels, and other supplementary subsurface information pertaining to underlying materials and conditions at locations specified in the contract documents are presented as the best information known to the Public Works Department, Engineering Division. There is no warranty or guarantee, either expressed or implied, that the conditions indicated by such investigations are representative of those existing throughout such area, or any part thereof, or that unforeseen developments may not occur. Owner and City Engineer 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.

It shall be the contractor's sole responsibility to examine the site and available records. 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.

105.10.00 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.

105.11.00 WATER AND AIR POLLUTION CONTROL

Throughout the life of the contract, contractor's operations shall conform to applicable laws and regulations of the Oregon Department of Environmental Quality and other agencies of the state and federal government, as well as local ordinances and resolutions designed to prevent, control, and abate water and air pollution.

During all phases of the work, and when directed, the contractor shall protect work sites, storage, and disposal areas from washout and erosion and take precautions to control or abate dust nuisance and air pollution by cleaning up, sweeping, sprinkling, covering, enclosing, or sheltering work areas and stockpiles and by promptly removing from paved streets earth or other material that may become airborne or may be washed into waterways or drainage systems.

105.12.00 NOISE

The contractor shall avoid creating unnecessary noise as defined in applicable subsections of Chapter 7.08.050 of the Albany Municipal Code.

Equipment used during the course of the work that employs the use of internal combustion engines shall be equipped and maintained with serviceable mufflers or other noise reducing devices of a type recommended by the manufacturer of the equipment.

105.13.00 WORKING HOURS

The contractor shall limit construction activities to the hours between 7:00 a.m. and 6:00 p.m., Monday through Friday.

If the contractor desires to perform construction work on Saturdays, Sundays, City holidays, or outside the 8-hour, regular working day, the contractor shall request of the City Engineer permission to do so, in writing, a

minimum of 72 hours prior to commencing such work. Such work shall be subject to the approval of the City Engineer. Prior to the start of such work, the contractor shall arrange with the City Engineer for inspection of the work, surveys, and tests of materials, when necessary.

Any costs outside of an 8-hour day, Monday through Friday, including billable costs by the City Engineer due to such work shall be fully paid by the contractor. The owner shall be compensated for a minimum of 8 hours per day for an inspector to monitor the work, regardless of the amount of time actually spent on the job site. Failure by the contractor to pay such costs incurred by the owner or City Engineer shall result in the costs thereof being deducted from any payment due the contractor.

The contractor shall agree, pursuant to ORS Chapter 279C.520, that no person shall be employed for more than 10 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. In such cases, the worker shall be paid at least time and one-half for all overtime in excess of 8 hours a day and for work performed on Saturday, Sunday, and on any legal holiday.

105.14.00 ACCESS TO THE WORK

The contractor shall provide safe access to the work for the City and any other agencies having jurisdiction in the area or in the work, including public utilities and private testing labs, for determining if the work meets the requirements and intent of the contract documents.

During all construction activities, the contractor shall provide ladders, shoring, scaffolding, and other equipment as necessary for safe, legal access to the work area. Ladders, shoring, scaffolding, and related materials shall conform to the latest revision of the OSHA regulations.

105.15.00 DEFECTIVE OR UNAUTHORIZED WORK

105.15.01 GENERAL

Work that does not conform to the requirements of the contract documents will be considered as unacceptable and/or defective.

Any unacceptable and/or defective work found to exist at any time prior to final acceptance of the work shall be immediately removed and replaced with work and materials that conform to the contract documents, or remedied otherwise in an approved manner.

This provision shall have full effect regardless of the fact that the unacceptable work may have been accomplished or the defective materials used in the presence of or with the full knowledge of the City Engineer.

105.15.02 UNAUTHORIZED WORK

Work done contrary to or beyond the lines and grades shown in the contract documents, or as directed by the City Engineer, or any other work done without authority, will be considered as unauthorized and will not be paid for under the provisions of the contract. Work so done may be ordered removed or replaced at the contractor's sole expense.

105.15.03 RETAINING NON-CONFORMING WORK

In some instances, including deviation from specified line and grade and use of unauthorized materials, the removal and replacement of defective or non-conforming work may not be in the best interests of the City. In the event any defect in workmanship or materials is determined by the owner to be of a minor nature in that retaining such work would not affect the function or purpose of the project, or if removal of the work would cause additional damage to adjacent work or inconvenience to the public, as determined by the owner, the owner shall have the right to retain such work and to make a deduction in the contract price for the work as is determined reasonable by the owner.

The following requirements shall apply to all non-conforming work that is retained by the owner:

- (1) Retaining non-conforming work shall be at the sole discretion of the City Engineer. The contractor shall have the option of accepting a deduction in contract price for the work. In the event the contractor and the City Engineer are unable to agree on the terms relative to the acceptance of non-conforming work, the contractor shall replace the work or bring the work into conformance with the contract documents.

- (2) A change order shall be issued and signed by both parties for all non-conforming work that is accepted by the City Engineer. The change order shall describe the work being retained, the amount of deduction, and any revisions to the normal warranty period for the work.
- (3) The method of determining the amount of the deduction shall be determined by the City Engineer.
- (4) Non-conforming work that is retained by the City Engineer shall remain under warranty. The warranty period may be extended depending upon the type of work being retained and the nature of the deficiency.
- (5) Non-conforming work that subsequently deteriorates to a condition that compromises the function of the work or adjacent structures shall be replaced or brought into conformance with the contract documents within the warranty period by the contractor. The contractor shall not be entitled to a refund of any deduction made for the City Engineer's acceptance of non-conforming work that was subsequently replaced or brought into conformance with the contract documents during the warranty period.

105.16.00 FINAL INSPECTION

The contractor shall notify the City Engineer in writing when all work on the project is complete and all bills, forms, or other documents required in the contract documents have been submitted. The City Engineer will make an inspection of the project and project records within 14 days of receipt of said notice. If, during such inspection, all construction work on the project is complete and acceptable in every respect and all bills, forms, or other documents required in the contract documents have been properly submitted, such inspection shall constitute the final inspection.

If, during the inspection, incomplete or defective work is discovered, project documentation is incomplete or submitted incorrectly, or the project is not ready for final inspection, the City Engineer will provide the contractor with a written notification listing the work yet to be done. The contractor shall remedy incomplete or defective work and submit any required documentation prior to requesting final inspection.

106 CONTROL OF MATERIALS

106.01.00 PREFERENCE FOR USE OF OREGON PRODUCTS

Preference may be given to services, articles, or materials produced or manufactured in Oregon if price, fitness, availability, and quality are otherwise equal. These provisions do not apply to contracts on projects financed wholly or in part by federal funds.

106.02.00 QUALITY OF MATERIALS

The contractor shall use new materials and equipment that conform to specified requirements in the contract documents. Approved materials and products that become unsuitable or unacceptable for use, regardless of cause, will be rejected by the City Engineer and shall not be used. Any material rejected by the City Engineer shall be removed at once from the job site by the contractor at the expense of the contractor.

106.03.00 SAMPLING AND TESTING

Tests of materials may be required by the owner in accordance with methods described or designated in the contract documents at any time during the production, fabrication, preparation, and use of the materials.

The owner reserves the right to require the contractor to take samples and to have products tested for compliance with pertinent requirements without regard to prior certification of the products by the manufacturer.

When such tests of materials are required, collection of samples and subsequent testing shall be made by and at the expense of the contractor. The contractor shall withhold from use the materials represented by the samples until tests have been made and the materials found equal to requirements of the contract documents. No claim will be allowed for any delay caused by collection of samples, testing, or awaiting test results.

In the absence of any reference specification, it shall be understood that such materials shall meet the specifications and requirements of the ASTM, or the AASHTO. When there is no pertinent coverage under the 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 a reputable industry standard for a high-quality product of the kind involved.

If testing indicates evidence of noncompliance with the specified requirements, the contractor shall correct the deficiency and conduct additional testing, at the contractor's sole expense, as necessary or as directed by the City Engineer to assure that the materials or the performance of the work continues to meet the specified requirements.

Testing shall be performed by or handled through a testing laboratory approved by the owner.

106.04.00 CERTIFICATION

For commercial products, inclusive of industry standardized products, in lieu of normal sampling and testing procedures by the contractor and owner, the City 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 shall certify that such test results are on file with the manufacturer and will be furnished to City Engineer upon request.
- (3) Certification shall give the name and address of the manufacturer and the independent testing agency and the date of tests and shall set forth the means of identification that 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.

No materials that require certification shall be allowed on the job site unless the materials have been certified by the manufacturer and such certification accepted by the City Engineer.

106.05.00 TRADE NAMES, APPROVED EQUALS, OR SUBSTITUTIONS

In order to establish a basis of expected quality, specific materials, including manufacturing processes, construction practices, or types of equipment may be specified in the contract documents by description and/or trade name. Whenever designated in the contract documents, it shall be understood that these materials are not to be substituted with other materials unless approved by the City Engineer prior to the intended use of the substitute in the work. It is not the intent of these specifications to exclude other processes, practices, materials, or equipment of verifiable merit for use in the work. If, after the contract is executed, the contractor desires to furnish materials other than those specified, pertinent documentation and testing information for a material substitution shall be submitted at least 10 days in advance of its use in the work. Information submitted with the request shall be such that the City Engineer can determine whether the substitution is in compliance with the existing specification and comparable to the named brand. Materials delivered to the job site that are not listed in the contract documents as being acceptable or that have not received prior written approval of the City Engineer will be rejected for use in the work.

If the proposal includes a description of a process, a type of equipment, or materials for which contractor must name a supplier or manufacturer at time of submission of the bid, no substitutions will be permitted after a proposal has been accepted without the express written consent of the City Engineer.

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 City Engineer for the convenience of contractor or to accommodate an unforeseen difficulty in obtaining a specified article.

106.06.00 STORAGE AND PROTECTION OF MATERIALS

The contractor shall store materials in a manner that will 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 therefore shall be provided at contractor's expense.

107 LEGAL RELATIONS AND RESPONSIBILITIES

107.01.00 LAWS AND REGULATIONS

It shall be the responsibility of the contractor to be fully informed of, and comply with, all applicable federal, state, and local laws, ordinances, and other regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority that may affect, in any manner, those engaged in the work or which in any way affects the conduct of the work. The contractor shall protect and indemnify owner and owner's representatives against any claim or liability arising from or based on the violation of any such law, ordinance, or regulation, order, or decree, whether by contractor, employees, subcontractors, suppliers of materials or services, or others engaged by the contractor.

The statutes of the state of Oregon for public works contracts, specifically but not exclusively ORS Chapter 279A through 279C, as amended or superseded, including the latest additions and revisions, are incorporated by reference as part of the contract documents.

107.02.00 SUBCONTRACTORS

No part of the work shall be transferred or subcontracted without the prior written consent of the owner, and no such consent shall release the contractor from any obligation to the owner or to persons employed by the subcontractors or to those supplying materials to the subcontractors.

107.03.00 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 therefore, from showing the true amount and 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 such measurement, estimate, or certificate, or payment in accordance therewith, from recovering from the contractor and sureties such damages as it may sustain by reason of the contractor's 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.

107.04.00 OTHER CONTRACTS

Owner will have the right to let other contracts "in coordination" with this contract. The contractor shall cooperate with and provide such other contractors reasonable opportunity for access to the work site, for storage of materials, and for execution of their work. In the absence of any applicable language in either contract, any matter of dispute between contractors will be decided by the City Engineer, whose decision will be binding. If any part of the work depends upon work of any such other contractor for its proper execution, the contractor shall inspect said work and promptly report in writing to the City Engineer any defects that may affect subsequent work. Failure to do so shall constitute an acceptance of such other contractor's work as acceptable for the reception and attachment of contractor's own work and equipment.

107.05.00 INSURANCE

Before the contract is executed and work begins, the contractor shall furnish to the owner a Certificate of Insurance for the coverage and limits set out below which is to be in force and applicable to the project for the duration of the contract. The issuing insurance companies must have a minimum current A.M. Best rating of A-VII or approved by the City. The Certificate must state that any insurance coverage shown cannot be suspended, voided, canceled by either party, or reduced in coverage or limits except after 30 days prior written notice has been given to the owner by certified mail.

107.05.01 COMMERCIAL GENERAL AND UMBRELLA LIABILITY INSURANCE

At all times during the contract, the contractor shall maintain Commercial General Liability and if necessary Umbrella Liability insurance with limits of not less than \$2,000,000 per occurrence, \$3,000,000 General Aggregate/Products or Completed Operations Aggregate. The aggregate limits shall apply on a per-project basis. Such insurance shall be written on ISO occurrence form CG 00 01 or a substitute equivalent and provide coverage for liability arising from premises, operations, independent contractors, products/completed operations, personal and advertising injury, and contractual liability for the indemnity included in this agreement.

The contractor shall include the City, its officers, agents, and employees as Additional Insured on their policy by endorsement and shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The contractor shall be responsible for any deductibles or self-insured retentions contained in the coverage.

107.05.02 AUTOMOBILE AND UMBRELLA LIABILITY INSURANCE

At all times during the contract, the contractor shall maintain Automobile Liability and if necessary, Umbrella Liability insurance with limits of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any owned, non-owned, or hired automobile.

107.05.03 BUILDER'S RISK INSURANCE

The contractor shall insure the work for 100 percent of the replacement value thereof for the life of the contract against all loss or damage by fire and against all loss or damage covered by the Special Form Insurance coverage form, including theft, vandalism, and malicious mischief. The amount of the insurance may vary with the extent of the work completed but, at all times, shall be at least equal to the replace value of the amount furnished or delivered, but not yet accepted by owner. The insurance policy or policies shall be held jointly in the name of the owner and contractor as their respective interests may appear. The loss, if any, shall be made adjustable with and payable to owner as trustee for whom it may concern. Any payments made under such policy shall insure to the benefit of owner to the extent of any loss suffered by owner and to contractor as to any remaining balance, for replacement of the loss suffered. The contractor shall be responsible for all damage to the work under construction, whether from fire, water, high winds, theft, vandalism, or other cause during construction and until final completion and acceptance, even though partial payments or progress payments have been made under the contract. The contractor shall be responsible for any deductibles or self-insured retentions contained in the coverage.

107.05.04 WORKERS' COMPENSATION INSURANCE

The contractor, any subcontractors, and all employers working under the contract who are subject employers under Oregon Workers' Compensation Law ORS 656.017 are required to carry Oregon Workers' Compensation insurance coverage during this contract. The coverage provided must include at a minimum, Employers Liability limits of \$1,000,000 each accident, \$1,000,000 disease aggregate, and \$1,000,000 disease each employee.

107.05.05 CONTRACTOR'S POLLUTION LIABILITY INSURANCE

If the project requires the removal of any hazardous materials, the contractor and any subcontractors are required to carry a Contractor's Pollution Liability Insurance policy with a limit of not less than \$2,000,000 per incident/claim and \$2,000,000 Policy Aggregate. If coverage is on a Claims-Made Basis, the policy must provide a 24-month extended reporting period.

107.06.00 ROYALTIES AND PATENTS

The contractor shall pay all royalties and license fees and save 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.

107.07.00 PERMITS

The contractor shall keep fully informed of and comply with all federal, state, county, and local permit requirements applicable to the work specified in the contract documents. The contractor shall protect and indemnify the owner and its officers and agents against any claim or liability arising from or based on the violation of any such laws, ordinances, or regulations.

Permanent easements and right-of-ways necessary to the project will be obtained by the owner. Temporary working easements, licenses, and permits of entry shall be obtained by the contractor.

Building permits and similar permits required by the City of Albany in its regulatory capacity shall be obtained by and at contractor's sole expense. Other permits, licenses, and like fees related to the work and required by federal, state, county, or other agencies shall be obtained by and at contractor's sole expense.

107.08.00 WAGE RATES

Pursuant to ORS Chapter 279C.800 to 279C.870, the contractor shall pay minimum prevailing wages for work performed hereunder equal to the minimum prevailing wages on file in the office of the Commissioner of the Bureau of Labor and Industries applicable to the City of Albany, Oregon, area as of the date of advertisement for bids for each project.

107.09.00 EMPLOYER'S CONTRACT FOR MEDICAL CARE OF EMPLOYEES

The contractor shall make payment promptly, as due, to any person, co-partnership, association, or corporation, furnishing medical, surgical, and hospital care, or other needed care and attention incident to sickness or injury to employees of all sums that have been agreed to be paid for such services and all monies and sums which: (1) May or shall be deducted from the wages of employees for such services pursuant to the terms of ORS Chapter 655 and any contract entered into pursuant thereto; or, (2) are collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

107.10.00 PAYMENT OF OBLIGATIONS

The contractor shall make payment promptly, as due, to all persons supplying labor or materials for the prosecution of work under the contract. The contractor shall not permit any lien or claim to be filed or prosecuted against the owner on account of any labor or material furnished. The contractor shall pay to the State Tax Commission all sums withheld from employees pursuant to ORS Chapters 315 or 316.

Failure to make prompt payment of any claim when due for labor or services supplied for the prosecution of work under the contract, including labor or material supplied to subcontractors, may necessitate owner paying such claim to the person furnishing the labor or services and charge the amount of payment against funds due or to become due contractor by reason of the contract. Such payment shall not relieve the contractor or the surety from their obligation with respect to any unpaid claims.

107.11.00 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 any loss, damage, or claim of loss or damage to such property or the use thereof, arising from work under the contract. The contractor shall supply any bond or insurance and make any special guarantee deposit required by such governmental authority before beginning any portion of the work that affects or may affect the property of such governmental authority or the use thereof.

107.12.00 LABOR COMPLIANCE

Attention is directed to provisions of ORS Chapter 659 relative to unlawful employment practices and discrimination by employers against any employee or applicant for employment because of race, religion, color, sex, or national origin. Particular reference is made to ORS 659A.030, that states that it is an unlawful employment practice for an employer, because of the race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older or because of the race, religion, color, sex, national origin, marital status or age of any other person with whom the individual associates, or because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262, 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 further government contracts or federally-assisted construction contracts, in accordance with procedures authorized in Executive Order No. 11246; and such other sanctions 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.

107.13.00 RAILROAD CROSSINGS OR RIGHT-OF-WAYS

Specific requirements for projects that involve the crossing of any railroad line or encroachment on any railroad right-of-way will be outlined in the contract documents.

107.14.00 RIGHT-OF-WAYS, EASEMENTS, AND PREMISES

The contractor shall confine construction activities within property lines, limits of easements, and limits of construction permits as shown or specified in the contract documents, unless arrangements are made with adjacent private property owner(s). Prior to the use of any private property outside these specified boundaries, the contractor shall file with the City Engineer a written permission of the property owner(s) and, upon terminating such usage, file with the City Engineer a release from all damages, signed by the property owner(s).

The contractor shall not unreasonably encumber the specified work areas with materials and equipment. The contractor shall obtain and bear the cost of permits for special occupancy and use of the specified work areas from the proper agencies.

107.15.00 WARRANTY

The contractor shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City Engineer and at no cost to the owner, any and all defects in the work occurring within one year following the date of final acceptance of the work that are the result of defective or unauthorized materials and/or faulty workmanship. The warranty period and the contractor's obligation shall also apply to damage or disturbances to existing improvements and real property when such damage or disturbance is directly or indirectly caused, in whole or in part, by activities of the contractor in performing the duties and obligations under the contract.

When such defects or damage occur within the time period described heretofore to any part of the work done under the contract or to any existing improvements or real property adjacent to the work, the contractor shall repair or remedy the defect and the one-year maintenance period required shall be extended one year from the date of completion of such repair, with relation to such required repair.

Warranty periods for plantings, including street trees, are subject to additional establishment and warranty requirements as identified in 107.15.02.

107.15.01 WATER WORKS PROJECTS

The timely completion of warranty repairs on water works projects is especially critical since the failure of any component may adversely affect numerous water users or may cause extensive damage.

After receiving either written or verbal notification from the City, the contractor shall complete warranty repairs within the time period specified in that notification. The time period specified to complete a warranty repair will be dictated by the urgency of the problem as determined by the City Engineer.

Should the contractor not cause repairs to be made within the specified time, the City may undertake to make the necessary repairs and bill the contractor for the actual cost of the work.

107.15.02 WARRANTY PERIOD FOR PLANTINGS

The establishment and warranty periods for plantings shall be two years and shall be initiated upon the City's final acceptance of the work.

107.15.02A STREET TREES

The contractor shall provide a warranty for the vibrant and healthy survival of 100 percent of the trees through a two-year establishment period. The contractor shall replace trees that have died, are dying, or

are not demonstrating vibrant and healthy growth, as determined by the City, immediately upon discovery by the contractor or direction from the City Engineer within the warranty period. The warranty period shall be extended to provide a two-year establishment period for those trees which are replaced, beginning from the date of replacement. Section 210 of these standards identifies requirements during the establishment and warranty period for street trees.

107.15.02B PLANTS AND SHRUBS

The contractor shall provide a warranty for the vibrant and healthy survival of 100% of the plants and shrubs through a two-year establishment period. The contractor shall replace plants and shrubs that have died, are dying, or are not demonstrating vibrant and healthy growth, as determined by the City, immediately upon discovery by the contractor or direction from the City Engineer within the warranty period. At the end of the two year establishment and warranty period, if 15 percent of the plantings have required replacement an additional two-year warranty will be provided. Subsequent warranty periods will be required until 85 percent survival over the two-year warranty period has been achieved. Division 6 of these standards identifies requirements during the establishment and warranty period for post-construction stormwater quality facilities.

107.15.03 WARRANTY GUARANTEE

The contractor shall provide a financial instrument as a warranty guarantee in the amount of 100 percent of the contract amount. Acceptable instruments for the warranty guarantee are as follows:

- (1) A warranty guarantee incorporated with the performance guarantee.
- (2) A warranty maintenance bond.
- (3) Cash deposit with the City.

107.16.00 PUBLIC SAFETY AND CONVENIENCE

The contractor shall conduct operations with proper regard for the safety and convenience of the public and shall limit travel over public ways only to the extent necessary to perform the work in accordance with the contract documents.

When the project is located within or involves the use of public ways, the contractor shall provide adequate traffic control and a means of free access to all fire hydrants and private, public, and commercial property at all times, except during stages of construction when, as determined by the City Engineer, it is impractical to perform construction and maintain access simultaneously.

The contractor shall provide adequate barricades of an approved type that can be seen from a reasonable distance at all open excavations and obstructions. At night, all open excavations and obstructions shall be marked by lights.

The contractor shall observe all safety instructions received from City Engineer or governmental authorities, but following of such instructions shall not relieve contractor from any responsibility or liability for accidents to workers or damage or injury to person or property.

Emergency traffic such as police, fire, and disaster units shall be provided reasonable access to and through the work area at all times. The contractor shall be liable for any damages that may result from failure to provide such reasonable access or failure to notify the appropriate authority.

107.17.00 PUBLIC HEALTH

The contractor shall provide and maintain enclosed toilets for the use of employees engaged in the work. These accommodations shall be maintained in a neat and sanitary condition. They shall also comply with all applicable laws, ordinances, and regulations pertaining to the public health and sanitation including ORS Chapter 654 and the Oregon Occupational Safety and Health Code. The contractor shall be responsible for all costs related to meeting these requirements.

Sewage flows in existing facilities shall not be interrupted. Should the contractor be required to disrupt existing sewer facilities, for any reason, the sewage shall be conveyed in closed conduits and disposed of in a

sanitary sewer system, or transported to an approved disposal site in equipment designed for that purpose. Transporting and disposal of sewage shall be in conformance with all applicable state and local regulations.

Sewage shall not be discharged into or allowed to flow in storm drains, trenches, creeks, ditches, and similar drainage ways. Sewage spills or accumulations shall be cleaned up promptly.

The contractor shall protect all existing water distribution systems during the course of the work. Appropriate precautions shall be taken to prevent contamination when repairing damaged water lines.

107.18.00 USE OF EXPLOSIVES

Explosives used to facilitate excavation shall be fresh, stable material manufactured to the standards of the Institute of Makers of Explosives and shall conform to applicable requirements of ORS Chapters 476 and 480.

Persons actually engaged in the handling and use of explosives shall be licensed by the state for such work.

The use of explosives anywhere within the City limits, regardless of location, shall require the express written permission of the owner.

107.19.00 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 and for the elimination of any offensive odors resulting from extermination operations.

107.20.00 PERSONAL SAFETY

The contractor shall be responsible for conditions on the job site, including safety of all persons and property during performance of the work. This requirement shall 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 regulations are in conflict, the more stringent regulation shall apply.

The duty of the City Engineer to conduct construction review of the contractor's performance does not include review of the adequacy or legality of the contractor's safety measures.

107.21.00 CONDUCT OF CONTRACTOR'S EMPLOYEES

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

108 PROSECUTION AND PROGRESS OF WORK

108.01.00 PRECONSTRUCTION CONFERENCE

The contractor shall meet with the City Engineer for a preconstruction conference at a time established by the owner to discuss items of work, coordination of the work, or other business relating to the project. The contractor shall submit, when required, a construction schedule prior to the preconstruction conference.

108.01.01 CONTRACTOR'S CONSTRUCTION SCHEDULE

The contractor shall submit in writing, before starting work, a proposed construction schedule to the City Engineer. If it is desirable to carry on operations in more than one location simultaneously, the contractor shall submit a schedule 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 schedule as determined by owner, the contractor shall resubmit a schedule that conforms as approved. Construction schedules shall be updated by the contractor on a weekly basis or as necessary to represent the current status of the work and show how the work will be back on schedule.

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.

108.02.00 NOTICE TO PROCEED

Written notice to proceed will be given after the contract has been executed and the performance bond and all required insurances have been filed with and approved by the owner. The notice to proceed date shall establish the date for commencement of the contract time. Work under the contract shall not begin until such written notice has been given.

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

108.03.00 CONTRACT TIME

Contract time shall commence from the date of the notice to proceed.

The work outlined in the drawings and special provisions shall be fully completed within the number of days specified in the contract documents. This work shall include, but may not be limited to, construction, restoration, final testing, cleanup, and completion of any additional work requirements discovered during the final inspection. If reasonable progress is not being made, insufficient forces are being employed, inadequate equipment and methods are being used, or if progress is for any reason unduly delayed, the City Engineer may instruct the contractor in writing to increase the work force or equipment or adopt improved methods to expedite the work. Conformity to the City Engineer's instructions shall not relieve the contractor of any responsibilities under 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.

108.04.00 SUSPENSION OF WORK

The work may be suspended in whole or in part when the City Engineer determines that such a suspension is in the best interests of the owner. The contractor shall comply immediately with any verbal or written notice of the City Engineer suspending work. Verbal orders suspending work will be followed, as soon as is practical, with a written notice.

Such suspensions may be "without cause," where the owner assumes responsibility for certain costs associated with the suspension or "with cause," where the owner places liability for the costs of the suspension with the contractor.

108.04.01 SUSPENSION BY OWNER, WITHOUT CAUSE

The City Engineer may suspend work, without cause, when such suspension is deemed to be in the best interests of the owner, the public, the work, or for other reasons beyond the control of the contractor. The contractor shall temporarily suspend work on the project, wholly or in part, when directed to do so by the City Engineer.

In the event of such suspension without cause, the City Engineer shall give the contractor three days' notice of suspension. Work shall be resumed within five days after notice has been given by the City Engineer to the contractor to do so. The owner shall allow the contractor an extension of time for project completion corresponding to the total period of temporary suspension, as measured from the date and time a notice to suspend work is issued to the date and time a notice to resume work is issued, and shall reimburse contractor for necessary rental of unused equipment, services of security patrols, and other unavoidable expenses accruing by reason of a suspension without cause.

The contractor shall not be entitled to damages, intangible or overhead costs, or anticipated profits as a result of a suspension without cause.

108.04.02 SUSPENSION FOR CAUSE

The City Engineer may suspend work, with cause, on the project, wholly or in part, if the contractor fails to: (1) Correct unsafe conditions for working personnel, the general public, or owner's employees; (2) carry out provisions of the contract documents; (3) immediately correct defective and unacceptable work; (4) carry out orders or directives the City Engineer may deem necessary due to conditions considered unsuitable for the performance of the work; or (5) for other reasons deemed by the City Engineer to be in the public's best interest and within the control of the contractor.

108.04.03 VOLUNTARY SUSPENSION BY CONTRACTOR

There shall be no voluntary suspension or slowing of the contractor's operations without prior written approval of the City Engineer and, if approved, such approval will not relieve contractor from any responsibility to complete the contract work within the prescribed contract time. Should operations be discontinued, the contractor shall notify the City Engineer at least two working days in advance of resuming operations.

108.04.04 RESPONSIBILITY OF CONTRACTOR

Voluntary or involuntary suspension or slowdown of contractor's operations, with or without the approval of the City Engineer, and suspension of work ordered by the City Engineer will not be grounds for claims for damages, idle equipment, labor costs, or extra compensation. No allowance or compensation will be made on account of such suspensions of work except as provided herein.

At the commencement of and during any suspension of the work, the contractor shall be responsible for the care of work performed and shall take every precaution to prevent any damage or deterioration of the work. The contractor shall be responsible for all of the work, including temporary traffic control devices to warn, protect, and guide traffic during a suspension of work, the same as though the contractor's operations had been continuous and without interference.

The contractor shall be responsible for all costs for providing appropriate traffic control, maintenance, and protection of the work during any suspension of work.

108.04.05 RESUMPTION OF WORK

In all cases of suspension, work shall be resumed only upon verbal or written order by the City Engineer. Verbal orders ordering or authorizing a resumption of work will be followed, as soon as is practical, with a written order.

108.05.00 CONTRACT TIME 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 the contractor, that could not have been foreseen by the contractor, and that the City Engineer determines actually affected the time necessary for completion of work under the contract.

Contractor's request for adjustment of contract time shall be in writing and shall be accompanied by the written consent to such extension by the surety on the bond if the extension is accumulatively in excess of 25 percent of the time allowed in the original contract. The request must include the following as minimum information:

- (1) Cause of delay
- (2) Type of work affected (e.g., grading, paving, etc.)
- (3) Date and time of start of delay
- (4) Total duration of delay in days and hours
- (5) Date and time of termination of delay

Owner or City Engineer will not consider adjustment of contract time based on a shortage or inadequacy of labor and equipment, negligence or fault on the part of the contractor, or other deficiencies or lacks that are within the contractor's control or responsibility. Causes that 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 bond form to the contractor for execution within the specified time
- (4) Performance of extra work
- (5) Court orders enjoining the prosecution of the project
- (6) An act of the owner, its representatives, and its other contractors that is not authorized by the contract or permitted by law
- (7) Strikes affecting the contractor's material, equipment, labor, or access requirements
- (8) Acts of God that shall include unusual action of the elements not reasonably foreseeable

Adverse weather conditions will be considered as a basis of claim for additional time only if weather conditions were abnormal for the period of time and could not have been reasonably anticipated and weather conditions had an adverse effect on the scheduled construction.

A contract time extension will be considered only if the contractor has given written notice to owner of the cause of delay within 10 days after the beginning thereof and notice to owner of the termination thereof within five days after such termination and makes claim for such extension prior to the contract completion date. The decision by owner 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, losses, or expenses incurred by reason of such delay.

108.06.00 LIQUIDATED DAMAGES

Time shall be considered the essence of the contract. If contractor fails to complete the project or to deliver the supplies or perform the services within the time specified in the contract or any extension thereof by owner, the actual damage to owner for the delay will be substantial but will be difficult or impractical to determine.

It is agreed, therefore, that the contractor shall pay to the owner, not as a penalty but as liquidated damages, a per diem amount as calculated from the table below. This amount, or modified amount thereof as given in the special provisions of the contract, shall be applied for every day elapsed in excess of the contract time or the final adjusted contract time applicable to the work required under the contract.

<u>Contract Value in Dollars</u>	<u>Liquidated Damages per Day</u>
0-50,000	\$150
50,000 – 100,000	\$300
100,000 – 500,000	\$600
500,000 - 1,000,000	\$700
1,000,000 - 2,000,000	\$800
2,000,000 - 5,000,000	\$1,100
5,000,000 +	\$1,200

Assessment of liquidated damages shall continue until such time as all work has been fully completed, including, but not necessarily limited to, construction, restoration, final testing, cleanup, and completion of any additional work requirements discovered during the final inspection. Assessment of liquidated damages may be stopped, temporarily discontinued and restarted, or waived, in part or whole, at the discretion of the City Engineer.

Permitting contractor to continue and finish the work or any part thereof after the contract time or adjusted contract time has expired, as pertinent, shall in no way operate as a waiver on the part of owner or any of its rights under the contract.

Payment of liquidated damages shall not release contractor from obligations in respect to the fulfillment of the entire contract, nor shall the payment of such liquidated damages constitute a waiver of owner's right to collect any additional damages that may be sustained by failure of contractor to carry out the terms of the contract, it being the intent of the parties that said liquidated damages be full and complete payment only for failure of contractor to complete the work on time.

108.07.00 CONTRACTOR'S REPRESENTATIVE

Prior to starting work, contractor must provide written designation of an authorized representative who, in the absence of contractor, shall have complete authority to represent contractor in all respects.

The contractor, or authorized representative, shall supervise the work, shall be present on site continually during its progress, and shall keep a complete copy of the drawings and specifications on or near the site at all times.

If contractor, or authorized representative, is not present on any part of the work where it may be necessary to give communications, notice of non-conformance may be given by City Engineer to the superintendent or foreman who may have charge of that particular part of the project, and such notice shall be received and followed. Such communications shall not be deemed to change the status of contractor or subcontractor, nor to make owner an employer, nor to give owner responsibility for the methods and manner of the work. Such communications of major importance will be confirmed in writing. Any communications will be so confirmed in each case on written request from the contractor.

108.08.00 CONFLICTS, ERRORS, OMISSIONS, AND ADDITIONAL DRAWINGS

The contractor shall review thoroughly all contract documents prior to construction and notify City Engineer of any discrepancies, omissions, or conflicts in order to permit correction by City Engineer.

The contractor shall furnish labor and materials required for the work if indicated in one part of the contract documents and not the other as fully as if mentioned or indicated in all places. Should any work or materials be reasonably required or intended for carrying the project to completion that are inadvertently omitted in the contract documents, contractor shall furnish same as fully as if particularly delineated or described.

The intent of the contract documents is to show and describe a complete project within the limits stated. Dimensions and elevations shown on the drawings shall be followed, rather than scale measurements. Whenever it appears that the contract documents do not contain sufficiently detailed or explicit information, the City Engineer may furnish additional written information and the contractor shall perform the work in accordance with these additional details or instructions.

108.09.00 OWNER'S RIGHT TO DO WORK

In neglecting to prosecute the project properly, or by failing or refusing to perform any of the terms or conditions of the contract, the contractor shall permit the 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 the City Engineer to the contractor and contractor's surety unless, in the judgment of the City Engineer, an emergency or danger to the work or to the public exists; in which event, the City Engineer may take action as set forth above without any notice whatsoever.

The cost of such action by owner will be deducted from any payment due contractor. The contractor shall pay owner any costs in excess of such payment due.

108.10.00 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 be deemed a breach of contract, at owner's option. Upon such failure, owner shall have the right, whether an alternative right is provided or not, to declare the contract terminated. Issuance by owner of an order stating that the contract is terminated, and service of a copy of said order upon contractor and contractor's 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 contractor's sureties shall be liable under the bond for all losses, expenses, and damages caused to owner by reason of the contractor's failure to complete the contract; and surety shall be required, at owner's option, to complete the

project. Notwithstanding such termination, contractor and contractor's sureties shall remain liable under the terms of the contract for work performed prior to such termination. The City Engineer, subject to owner's approval, will determine the payment due contractor for work performed prior to the date of contract termination.

108.11.00 DEFAULT BY CONTRACTOR

If contractor fails to begin work as required by the contract; or if contractor should be adjudged bankrupt or make a general assignment for the benefit of creditors or a receiver is appointed on account of insolvency; or, if at any time when work has been resumed after a suspension of work, contractor refuses, neglects, or fails to correct the deficiency(s) or reason(s) for the suspension; or if contractor abandons the work, owner may give written notice of default to contractor and contractor's surety, and contractor shall discontinue or not begin the work, and any or all payments due to or that may become due to contractor may be withheld by owner until the completion by owner, surety, or another person of all work included in the contract and until expiration of any maintenance and/or warranty period.

After service on contractor of such order to desist from work or part thereof, or notice of termination, owner may take possession of the project or such designated part thereof, and may use all or any part of contractor's plant, tools, equipment, materials, or other property on the project, none of which shall be removed by contractor as long as they may be required for the work, and owner may, by contract or otherwise, provide supervision of workmen, materials, appliances, and equipment necessary for the completion of, and may complete the project or such designated part thereof. The expense so incurred for completion of the project or part thereof, together with all damages, liquidated or otherwise sustained or to be sustained by owner, shall be deducted from the fund or appropriation set aside for the purpose of the contract and shall be charged to contractor as if paid to same. In case the amount of such expenses and damages exceeds the sum that would have been payable under the contract if completed entirely by contractor, the amount of such excess shall be paid to owner by contractor and both contractor and sureties shall be liable to owner therefore; in case the amount of such expenses and damages shall be less than the sum that would have been payable under the contract if completed entirely by contractor, contractor shall be entitled only to payment in accordance with contract terms for the work contractor actually performed, subject however, to all terms of said contract.

The contractor shall complete all work unless an order to desist as provided above has been received and cooperate with and in no way hinder or interfere with forces employed by owner or others.

Upon completion of the project by others, the contractor shall be entitled to the return of all material that has not been used in the work or that 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 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 the failure of contractor to complete the project within the time prescribed.

108.12.00 COMPLETION AND ACCEPTANCE

After completion of all items of work in the contract and completion of final inspection, the City Engineer will recommend to owner that the work be accepted, and final payment be made.

Final acceptance of work completed under the contract will be made by the approval of the final payment by the owner.

109 MEASUREMENT AND PAYMENT

109.01.00 MEASUREMENT OF QUANTITIES

Payments will be based on measurements of completed work in accordance with the United States Standard Measures. Basis is defined as the particular standard unit of measurement that will be applied to a particular item of work as shown in the proposal for a specific contract.

Units of measurement for payment will be as shown or specified. City Engineer will make measurements at no cost to contractor. In calculating quantities, lengths and areas will be based on horizontal and vertical measurements unless otherwise specified.

Volume of materials measured in the vehicles by which they are transported will require computing of 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 contract documents or as altered on order of the City Engineer.

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

When payment for materials other than bituminous cements is on a weight basis and unless otherwise set forth in the contract documents 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 hereafter. Such weighing is to be of material in the hauling vehicle as loaded for delivery. Determination of tare weights and weight of loaded vehicles will be to the nearest 20 pounds. Tare weights will be determined by weighing empty vehicles at intervals of such frequency as the City 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° F, with standard recognized correction factors applied when the materials are measured at any temperature other than 60° 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 contract documents under which their use is required.

When the contract calls for materials that are to be measured by weighing on scales, the contractor shall provide suitable scales and transport materials to scales at no expense to the owner. Before use of scales is commenced, and as frequently thereafter as the City Engineer may deem necessary to ensure accuracy, the contractor shall have the scales examined by an official of the State Sealer of Weights and Measures, and bear all costs resulting there from. The contractor shall be responsible for maintaining the scales 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, the contractor shall bear expense of whatever extra hauling is required. If hauling of materials is to be paid for as a separate pay item, the pay distance shall be via the approved route and no allowance will be made for extra hauling required to reach the scales.

If material is weighed on public scales, the City Engineer will be present at all times to witness the weighing and to check and compile records of scale weights.

109.02.00 SCOPE OF PAYMENT

Quantities listed in the proposal do not govern final payment. 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, as full payment for furnishing all materials, labor, equipment, and incidentals necessary for performing all work under the contract and for all loss, damage, or liability arising from the nature of the work or from the action of the elements or from any unforeseen difficulties that may be encountered during prosecution of the work, until expiration of the warranty period.

109.03.00 PAYMENT FOR CHANGES INITIATED BY THE OWNER

109.03.01 CONTRACT UNIT PRICES

If a change is ordered in an item of work covered by a contract unit price, and such change does not involve a substantial change in the character of the work from that shown in the contract documents, an adjustment in payment will be made based upon the increase or decrease in quantity and the contract unit price. Any increase or decrease of more than 25 percent in the quantity of any major contract item requires the execution of a supplemental agreement acceptable to both parties. A major contract item is any item for which the contract price amounts to 10 percent or more of the total contract cost as determined by the original proposed quantities and contract unit prices.

If a change is ordered in an item of work covered by a contract unit price, and such change does involve a substantial change in the character of the work from that shown in the contract documents, an adjustment in payment will be made as specified herein.

Adjustments in payments for changes other than those specified herein will be determined by agreement between contractor and owner. If unable to reach agreement, the owner may direct the contractor to proceed on the basis of extra work.

109.03.02 STIPULATED UNIT PRICES

Stipulated unit prices are those established by the owner in the contract documents, as distinguished from contract unit prices submitted by the contractor. Stipulated unit prices may be used for the adjustment of contract changes.

109.04.00 ELIMINATED ITEMS

City Engineer will have the right to eliminate, omit, or cancel (herein collectively termed elimination) portions of the contract documents relating to construction of any item or part of any item therein by payment to the contractor of a fair and equitable amount covering all items of actual cost incurred directly in connection with eliminated work and prior to the date of elimination of work by order of the City Engineer. When practicable, work completed before elimination will 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 for force account work; but no allowance will be made for anticipated profits. Acceptable materials ordered by contractor, delivered on the work, or properly stored at sites approved by the City Engineer prior to date of elimination of work by order of City Engineer may be purchased from contractor by owner at actual cost and, thereupon, will become the property of owner.

109.05.00 PAYMENT FOR EXTRA WORK

The contractor shall perform extra work 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, the agreed adjustment will be based either on unit prices decided on fair and equitable grounds or will be a lump sum similarly decided, as owner may determine, or such work may be done as extra work at force account. The contractor shall not make any claim for extra work unless ordered as such.

109.06.00 PAYMENT FOR FORCE ACCOUNT WORK

109.06.01 GENERAL

The contractor shall include all claims for force account work in progress estimates submitted to the City Engineer. Such claims shall show hours of all equipment use, and names and number of each worker employed thereon, date and number of hours so employed, character of work each is doing, and wages paid or to be paid.

Also, the claim shall identify all materials, show dates of delivery, quantities, and net amounts paid or to be paid, together with receipted invoices.

When work is performed on a force account basis by an authorized subcontractor, the contractor will be allowed a supplemental markup of five percent on each force account order.

109.06.02 PERCENTAGE ALLOWANCE OVER ACTUAL COST

When extra work is ordered to be done on a force account basis, such work will be paid for on the basis of cost plus certain percentage allowances.

The percentage allowances made to the contractor shall be reimbursement and compensation for all supervision, use of small equipment, overhead expense, bond cost, insurance premiums, profits, indirect costs, and losses of all kinds, and all other items of cost not specifically designated herein as items for which payment is to be made, whether the services, costs, and other items involved are furnished or incurred by contractor or by subcontractor. No other reimbursement, compensation, or payment will be made for any such services, costs, or other items.

Items of cost for which payment will be made and to which payment will be restricted, together with the percentage allowance applicable to the respective items, are as follows:

<u>Items of Cost for Which Payment Will be Made</u>	<u>Percentage Allowance Additional to Actual Cost</u>
LABOR, including time of foreman, while engaged directly upon force account work.....	20%
MATERIALS and supplies actually used on the force account work.....	15%
EQUIPMENT rental on each piece of equipment having a purchase value in excess of \$300, provided the rental rate does not exceed the current rates established below	5%
INSURANCE contribution made by the employer for Industrial Accident Fund under terms of the Workers' Compensation Act.....	20%
INSURANCE contributions made by the employer under the Unemployment Compensation Act and under the Social Security Act for old age insurance	20%

109.06.03 LABOR

Payment for labor used in the work will be computed at the prevailing rates established by the Oregon Department of Labor, plus additional allowance set forth above. Time allowed shall be the number of hours worked directly on force account operations.

109.06.04 MATERIALS

Payment for materials and supplies used on force account work will be computed at prices billed to contractor by the supplier, less all discounts plus additional allowance set forth herein. Freight will be considered a part of the cost of materials and supplies and will be paid for as materials and supplies. Materials and supplies produced by contractor will be paid for at prices agreed upon between contractor and City Engineer.

The owner reserves the right to furnish such materials as the owner deems necessary to take advantage of any available cost savings or to establish the cost of such materials at the lowest current price at that said materials are available in the quantities concerned, delivered to the location of the work.

109.06.05 EQUIPMENT RENTAL

Rental rates for contractor's equipment will be based on the current edition of the "Rental Rate Blue Book for Construction Equipment" and the "Rental Rate Blue Book for Older Construction Equipment" that are published by the Equipment Guidebook Company, 2800 W. Bayshore Road, Palo Alto, CA 94303. The hourly rates for the contractor's equipment will be determined by dividing the weekly rate by 40 hours and not the

hourly rates as indicated in the publications listed above. Equipment for the force account work shall be paid for at this calculated hourly rate until the equipment is used for a week or a month and then, at that time, the appropriate weekly or monthly rate would apply. For the use of equipment not listed in said document, the rental rates shall be as agreed in writing between the contractor and the City Engineer prior to use of said unlisted equipment. Reference copies of the above publications are on file at the office of the Oregon Department of Transportation Region Engineer and area offices of the Associated General Contractors of America.

Rental on equipment not owned by the contractor will be computed at the rates actually paid by contractor, supported with an invoice, plus the allocable allowance set forth herein. The contractor shall obtain prior written approval of the City Engineer for rental rates higher than scheduled rates for non-owned equipment.

When equipment is ordered on standby status by the City Engineer, the rate for the standby equipment will be paid at one-third of the appropriate hourly rate as established herein. Standby rates that are calculated at less than \$1.00 per hour will not be paid. Payment will be limited to not more than eight hours in a 24-hour day or 40 hours in a normal work week.

When a piece of equipment and operators thereof are hired, rented, or furnished as a unit, the additional percentage to be allowed shall be five percent; and contractor shall not be entitled to 20 percent on the time of operators of such equipment. Neither shall contractor be entitled to payment for contributions made under terms of the Workers' Compensation Act, Unemployment Compensation Act, or Social Security Act to cover the time of these operators.

For equipment rented on a daily or hourly basis, rental cost will be allowed for only those days or hours during which the equipment is in actual use. For equipment rented on a monthly basis, straight-time rental cost will be allowed from the day equipment is first used on the particular piece of force account work until and including the last day on which it is used on the particular work, excluding, however, time the equipment is used on other work during the period, and further excluding time that the equipment is idle for a continuous period of more than six days.

Rental costs allowed for equipment shall include all costs, and no further allowances will be made for those items unless specific agreement is made in writing before the work is commenced. Individual pieces of equipment having a purchase value of \$300 or less will be considered small equipment, and no rental will be allowed on such.

109.07.00 PROGRESS PAYMENTS AND RETAINAGE

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

109.07.01 PROGRESS PAYMENTS

Before the fifth of the following month, the contractor shall make a progress estimate of work performed in any calendar month, through the last day of the month, and submit to the City Engineer for approval. 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 on the whole amount of money that will become due according to the terms of the contract when the project has been completed.

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

If contract cost is determined wholly on a unit basis, City 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 City Engineer, truly represent actual relative costs of different parts of work, a percentage of the unit price may be used in making progress estimates.

Progress payments will be issued by owner on a monthly basis within 20 days from the contractor's submitted estimate of work performed, as approved by City Engineer; except that 30 days may be required when a payment is accompanied by one or more of the following: an extension of completion time, a change order, or

extra bill. Negotiable warrants will be issued by owner for the amount of the approved estimate, less five percent retainage.

If contractor fails to complete the project within the time limit fixed in the contract or any extension thereof, no estimate may be accepted or 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.

When the progress estimate indicates that the progress payment would be less than \$500, no progress payment will be made for that estimate period.

109.07.02 RETAINAGE

Of each progress payment total, five percent retainage will be withheld and retained by owner until it is included in and paid to contractor as part of the final payment of the contract amount. Securities in lieu of retainage will be accepted, or if contractor elects, retainage as accumulated may be deposited by owner in an interest-bearing account in a bank, savings bank, trust company or savings association pursuant to ORS Chapter 279C.560 for progress payments. The withholding of retainage throughout the course of the project will be according to ORS 279C.550 through 279C.570.

109.08.00 DEFERMENT OF PAYMENTS

No partial or final payment will be made until all communications made by City Engineer to contractor in accordance with the specifications are complied with, nor until all claims or liens filed or prosecuted against owner, its officers, or employees contrary to provisions of the contract are satisfied.

In the event a complaint or charge of unlawful employment practices pursuant to the provisions of ORS Chapter 659A 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 659A.820 through 659A.865, 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.

109.09.00 FINAL ESTIMATE AND PAYMENT

Pursuant to ORS Chapter 279C.570, the contractor shall notify the City Engineer when work is considered complete and City Engineer will either accept the work or, within 15 days after receiving notice, notify contractor of work yet to be performed on the contract. If accepted, City Engineer will so notify contractor, 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, the contractor shall supply and file with the City Engineer a statement in writing that complies with ORS Chapter 279C.845 and, under oath as heretofore set forth, certify the hourly rate of wage paid each nonexempt classification of worker employed by contractor upon such project. The contractor shall require each subcontractor who performed work on the project to file with the City Engineer a similar statement that covers its workers.

If a nonresident contractor, the contractor shall provide owner with evidence that provisions of ORS Chapter 279A.120 have been satisfied; this is a prerequisite to final payment.

As a further prerequisite to final payment, the contractor shall execute and deliver to owner, in form approved by the City 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 the surety completes said contract, all payments after declaration of default and retainages held by owner will be paid to surety and not to contractor in accordance with terms of the contract.

109.10.00 ACCEPTANCE OF FINAL PAYMENT

Acceptance by contractor of final payment shall release owner and City 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. However, no payment, final or otherwise, shall operate to release contractor or sureties from obligations under the contract and the performance, payment, and other bonds and warranties as herein provided.

**** END OF DIVISION ****