

# City of West Linn

## Public Works Standard Construction Specifications

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# DIVISION ONE – GENERAL REQUIREMENTS

## 101 DEFINITIONS AND ABBREVIATIONS

- A. Unless otherwise defined in the Contract Documents the following definitions and abbreviations shall apply wherever used.
- B. The words directed, required, permitted, ordered, requested, instructed, designated, considered necessary, prescribed, approved, acceptable, satisfactory, or words of like import, refer to actions, expressions, and prerogatives of the City Engineer.
- C. Command type sentences are used but are not exclusive of other directives, throughout these Standard Construction Specifications. In all cases the command expressed or implied is directed to the Contractor.

### 101.01 DEFINITIONS

#### Acceptance of Work

All work required by the Contract Documents will be considered accepted upon approval of the Certificate of Completion by Owner.

#### Acts of God

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

#### Advertisement

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

#### Attorney

The City Attorney of the City of West Linn, Oregon.

#### Bid

The offer of a Bidder, which is the basis of the Contract, submitted on Owner's official Bid form, to perform stated work at a price or prices quoted.

#### Bid Bond

The bond required to be submitted with each Bid as described in **Subsection 102.06, BID GUARANTY AND ORGANIZATION**, as a Bid Guaranty, which assures that the bidder will enter into a contract if his bid is accepted, synonymous with bid security. Bid bonds shall also be required for proposals.

#### Bidder

Any individual, firm, co-partnership, corporation, or combination thereof, submitting a Bid in response to the advertisement calling for bids on the work contemplated in the Contract.

#### Certificate of Completion

Standard Owner's form which must be signed by the Contractor.

#### Certificate of Compliance

Standard Owner's form which must be signed by the Contractor stating compliance with the Contract Documents.

#### Change Order

A written order issued by the City Engineer to the Contractor directing changes in the work, subject to approval of Owner.

**City**

The City of West Linn, Oregon, acting through its legally constituted City Council. The terms “City” and “Owner” are interchangeable.

**City Engineer**

The City Engineer of the City of West Linn, acting either directly or through authorized representatives.

**Contract Cost**

The aggregate amount of price promised to be paid by Owner to Contractor upon fulfillment of the Contract.

**Contract**

The document entitled contract or agreement which is executed by the Contractor and the Owner, authorizing ordinance, the advertisement calling for bids, the bid, instructions to bidder, plans, all specifications, addenda, permits, performance bond, insurance certificates, and change order for any approved revisions made during the performance of the work to any of the above listed documents, collectively referenced as the contract 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. In the case of work being done under permit issued by the Owner, the permittee shall be construed to be the Contractor.

**Day**

Calendar day, any and every day shown on the calendar, Sundays and Holidays included.

**Easement**

The right to use a defined area of property for specific purpose or purposes as set forth in the specifications.

**Foreign Contractor**

Contractor who has not paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, or does not have a business address in this state.

**Improvement**

General term encompassing all phases of work to be performed under a Contract for a Local Improvement District and is synonymous with the term Project or work.

**Inspector**

The authorized representative of the City Engineer whose authority, instructions, and decisions shall be limited to the particular duties and responsibilities entrusted to him in making detailed inspections of any or all portions of the work or materials therefore.

**Lump Sum**

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

**Manager**

The City Manager of the City of West Linn, Oregon, acting either directly or through authorized representatives.

**Non-Resident Bidder**

A bidder who is not a resident bidder.

**Notice**

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

business address of the individual, firm or corporation. In the case of a Contract with two or more persons, firms or corporations, notice to one shall be deemed notice to all.

### **OSHD Standard Specifications**

The latest edition of the Specification Document published by the State of Oregon, entitled Standard Specifications for Highway Construction, Oregon State Highway Division. This document is available from the Oregon State Highway Division, Salem, Oregon.

### **Owner**

The City of West Linn, Oregon, acting through its legally constituted City Council. The terms "Owner" and "City" are interchangeable.

### **Performance and Payment Bond**

The bond submitted by the Contractor and his surety as specified in the Contract and as more fully described in **Subsection 103.06, PERFORMANCE AND PAYMENT BOND.**

### **Plans**

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

### **Prequalification**

Process for pre-screening contractors.

### **Project**

General term encompassing all phases of the work to be performed under the Contract and is synonymous with the term Improvement or Work.

### **Proposal**

The submission of a plan or project, which becomes the basis of a Contract, submitted in response to a Request for Proposals.

### **Provide**

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

### **Reference Specifications**

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

### **Request for Proposals**

Method of contractor selection as set forth in ORS 279C.400 through ORS 279C.414 which may include but is not limited to award without negotiation, negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed either to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or any combination of methods. Unless otherwise noted, all requirements of these Standard Construction Specifications applicable to bids shall also be applicable to Requests for Proposals except first-tier subcontractor disclosure under ORS 279C.370 and reciprocal preference under ORS 279A.120.

**Resident Bidder**

A bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in its bid whether the bidder is a "resident bidder" under ORS 279A.120.

**Responsible and Responsive Bidder**

This term denotes a bidder who has the capability in all respects to perform fully the contract, and the integrity and reliability which will assure good faith performance and who has submitted a bid under a competitive sealed bid which conforms in all respects to the invitation for bids so that all bidders may stand on equal footing with respect to method and timeliness of submission and as to the substance of any resulting contract.

**Right-of-Way**

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

**Roadway**

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

**Shop Drawings and Submittals**

Supplementary plans or data or other information which 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 shown on the Plans in the Contract.

**Special Specifications**

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

**Specified**

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

**Standard Plans or Drawings**

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

**Standard Construction Specifications**

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

**Station**

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

**Street**

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

**Subcontractor**

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

**Substantial Completion**

The work (or a specified part thereof) has progressed to the point where, in the opinion of the City Engineer, it is sufficiently complete in accordance with the Contract Documents, so that the work (or specified part) can be utilized for the purposes for which it is intended.



**Surety**

The corporate body which is bound with and for the Contractor, for the acceptable performance of the Contract, and for his payment of all obligations arising out of the Contract.

**Unit Price**

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

**Use of Pronoun**

As used herein, the singular shall include the plural, and the plural the singular; any masculine pronoun shall include the feminine or neuter gender; and the term "person" includes natural person or persons, firm, co-partnership, corporation or association, or combination thereof.

**Utility**

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

**Work**

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

**Working Day**

Calendar day, any and every day shown on the calendar, excluding Saturdays, Sundays and Legal Holidays.

**101.02 ABBREVIATIONS**

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

|              |  |
|--------------|--|
| <b>DEQ</b>   | Department of Environmental Quality            |
| <b>EPA</b>   | Environmental Protection Agency                |
| <b>FHWA</b>  | Federal Highway Administration                 |
| <b>ITE</b>   | Institute of Traffic Engineers                 |
| <b>NEC</b>   | National Electrical Code                       |
| <b>NEMA</b>  | National Electrical Manufacturer's Association |
| <b>NLMA</b>  | National Lumber Manufacturer's Association     |
| <b>OAR</b>   | <b>Oregon Administrative Rules</b>             |
| <b>ORS</b>   | Oregon Revised Statutes                        |
| <b>OSHA</b>  | Occupational Safety and Health Administration  |
| <b>OSHD</b>  | Oregon State Highway Division                  |
| <b>ODOT</b>  | Oregon Department of Transportation            |
| <b>PCA</b>   | Portland Cement Association                    |
| <b>SDR</b>   | <b>Standard Dimension Ratio</b>                |
| <b>UBC</b>   | Uniform Building Code                          |
| <b>UL</b>    | Underwriters' Laboratories, Inc.               |
| <b>USASI</b> | United States of America Standards Institute   |
| <b>WWPA</b>  | Western Wood Products Association              |

## **102 INSTRUCTIONS TO BIDDERS**

### **102.01 EEO AFFIRMATIVE ACTION**

Bidders must comply with the City of West Linn's Equal Opportunity Policy for Contractors. The policy is included in and made a part of these Contract Documents.

### **102.02 PREQUALIFICATION OF BIDDERS**

- A. Prequalification application forms may be obtained from the City Engineer's Office, West Linn, Oregon. All bidders must be prequalified. Prequalification applications submitted without being designated for a project advertised for bid by the City will be considered as a general prequalification application and processed pursuant to ORS 279C.430, and notice of prequalification status will be given within 30 days of the receipt of the application.
- B. Pursuant to ORS 279C.435, bidders prequalified with the Department of Transportation or with the Oregon Department of Administrative Services, are rebuttably presumed qualified for the same kind of work. (NOTE: No person may engage in any business within the City without first obtaining a City license and paying the fee prescribed pursuant to City of West Linn Code.)

### **102.03 FORM OF BID**

- A. Bidders shall enclose the bid, bid bond, certified check or cashier's check in a sealed, labeled, and addressed envelope and file as required in the Notice to Contractors. The bidders shall also enclose a copy of the contract agreement signed by a representative of the bidder's organization authorized to bind the bidder to

contract. The contract will only become consummated upon signature by the Owner. A separate signed proposal form is not needed. The outside of the envelope should plainly identify: the Project name and the Bid Opening date. (Resolution 05-10 4/11/05)

- B. All bids must be clearly and distinctly typed or written with ink or indelible pencil and 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 bid embracing alternative bids.
- C. Unless otherwise specified, bidders shall bid on all bid items included in the bid and the low bidder shall be determined as noted in **Subsection 103.01, AWARD OF CONTRACT**. Except as provided herein, bids which are incomplete, or fail to reply to all items required in the bid may be rejected.
- D. All bids must 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, state names of all partners. The person signing on behalf of a corporation, a co-partnership or combination thereof shall state his position with the firm or corporation, and state whether the corporation is licensed to do business in the State of Oregon.

#### **102.04 WITHDRAWAL, MODIFICATION OR ALTERATION OF BID**

- A. A bid may only be withdrawn on written or telegraphic request of the bidder and received by the owner prior to the scheduled closing time for filing bids.
- B. Prior to Bid Opening, changes may be made provided the change is initialed by the bidder or his agent. If the intent of the bidder is not clearly identifiable, the interpretation most advantageous to Owner will prevail.

#### **102.05 LATE BIDS**

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

#### **102.06 BID GUARANTY AND ORGANIZATION**

Unless covered by an annual bid bond, filed with the Owner, in an unencumbered amount sufficient to cover all pending bids, all bids must be accompanied by a Bid guaranty guaranteeing that the bid will be irrevocable for 60 days, unless specified otherwise, in the form of a certified check or cashier's check payable to the order of the Owner, or a bidder's bond in such form as is approved by the City Attorney in an amount of at least 10% of the amount of the bid. Such bid guaranty shall be forfeited as liquidated damages if the bidder shall fail or neglect to furnish a performance bond and insurance, if required, and to execute and return the contract within 15 days after issuance of the Contract.

#### **102.07 INTERPRETATION OF CONTRACT AND ADDENDA**

- A. 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, or the Bidder requests additional information or an interpretation of the contract, the Bidder may make written inquiry regarding same to the City Engineer at least five days before the scheduled closing time for filing bids.
- B. If, in the opinion of the City Engineer, additional information or interpretation is required, an addendum will be issued to all known specification holders.
- C. Any addendum or addenda issued by the Owner which may include changes, corrections, additions, interpretations or information, and issued 48 hrs. or more before the scheduled closing time for filing bids, Saturday, Sunday and legal holidays not included, shall be binding upon the Bidder. Owner may supply copies

of such addenda to all contractors who have obtained copies of the Contract for the purpose of bidding thereon, but failure of the Contractor to receive or obtain such addenda shall not excuse him from compliance therewith if he is awarded the contract. Owner may also choose not to mail notice of Addenda, and to publish notice of any Addenda on Owner's Web site, instead, if such procedure is specified in the bidding documents.

- D. ORAL INSTRUCTIONS OR INFORMATION CONCERNING THE CONTRACT OR THE PROJECT GIVEN OUT BY OFFICERS, EMPLOYEES OR AGENTS OF THE OWNER TO PROSPECTIVE BIDDERS SHALL NOT BIND THE OWNER.

### **102.08 EXAMINATION OF CONTRACT, SITE OF WORK AND SUBSURFACE DATA**

- A. Bidders shall determine for themselves all the conditions and circumstances affecting the project or the cost of the proposed work, including without limitation utility interferences, by personal examination of the site, careful review of the Contract and by such other means as the Bidder feels may be necessary.
- B. It is understood and agreed that information regarding subsurface or other conditions, or obstructions indicated in the Contract Documents, is provided by Owner only for the convenience of Bidders and such information is not expressly or tacitly warranted to accurately represent actual conditions. Bidder's use of such information shall be at Bidder's sole risk, and Bidder is responsible to confirm any information provided from such independent sources as Bidder feels may be necessary.
- C. Logs of test holes, test pits, soils reports, ground-water levels and other supplementary subsurface information are offered as information of underlying materials and conditions at the locations actually tested. Owner will not be liable for any loss sustained by the Contractor as a result of any variance between conditions contained in or interpretations of test reports and the actual conditions encountered during progress of the work.
- D. The submission of a Bid shall be conclusive evidence that the Bidder has investigated and is satisfied as to the site 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.

### **102.09 FAMILIARITY WITH LAWS AND ORDINANCES**

- A. The Bidder is presumed to be familiar with all Federal, State, and local laws, ordinances, and regulations which in any manner affect those engaged or employed in the work or the materials or equipment used in the proposed construction, or which in any way affect the conduct of the work.
- B. If the Bidder, or Contractor, shall discover any provision in the Contract which is contrary to or inconsistent with any law, ordinance or regulation, he shall immediately report it to the Owner in writing.

### **102.10 UNIT BIDS**

- A. 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 warrant that the actual amount of work will correspond to the amount as shown or estimated. Payment will be made at unit prices under a contract, only for work actually performed or materials actually furnished according to actual measurement.
- B. Bidders must include in their bid prices the entire cost of each item of work set forth in the bid, and when, in the opinion of the Owner, the prices in any bid are obviously unbalanced, such bid may be rejected.
- C. The unit contract prices for the various bid items of the contract shall be full compensation for all labor, materials, supplies, equipment, tools and all things of whatsoever nature required for the complete incorporation of the item into the work the same as though the item were to read "In Place."

### **102.11 REJECTION OF BIDS**

- A. Owner reserves the right to reject any or all bids in whole or in part or waive irregularities.
- B. This invitation to bid does not commit the City to pay any costs incurred by any Bidder in the submission of a proposal, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the invitation to bid.

### **102.12 CONFLICT OF INTEREST**

A bidder filing a bid thereby certifies that no officer, agent, or employee of the City who has a pecuniary interest in this bid has participated in the contract negotiations on the part of the City, that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Bidder for the same call for bids, and that the Bidder is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.

### **102.13 INELIGIBILITY FOR PUBLIC CONTRACTS FOR FAILURE TO PAY PREVAILING RATE OF WAGE**

The bidder, in submitting the bid, does thereby certify that the bidder is not ineligible to receive a contract for a public work, as set forth in ORS 279C.860 and agrees, if awarded a contract, that every subcontractor will be required to certify compliance thereto, said certification to be filed with the City Engineer prior to such subcontractor commencing any work under the contract.

### **102.14 ORS 654.150 SANITARY FACILITIES AT CONSTRUCTION PROJECTS STANDARDS, EXEMPTIONS**

If the contract price is estimated (itemized bid) or bid (lump sum) by Contractor at \$500,000 or more, Contractor shall be responsible for all costs (which costs shall be included in the bid whether or not a specific bid item is provided therefore) that may be incurred in complying with or in securing exemption or partial exemption from the requirements of ORS 654.150, (Sanitary facilities at construction projects; standards, exemptions) and the rules adopted pursuant thereto. Whether or not ORS 654.150 is applicable to the project is the sole responsibility of the Contractor.

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

### **103.01 AWARD OF CONTRACT**

- A. The award will be made by Owner to the Bidder submitting the lowest, responsible and responsive bid. In determining the lowest acceptable bid, Owner may take into account, among other factors, 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 guaranty period specially proposed by the Bidder in excess of any minimums specified, the realistic balance of prices in the bids for various parts or units of work and the experience and ability of Bidder to perform the work.
- B. While price extensions are required as a matter of convenience, in the event of error in extensions, the unit prices bid shall govern. In the event of discrepancy between the written and numerical amounts, the written prices will govern.
- C. Determination of the lowest Bidder and award are subject to review and determination by the Attorney as to legal sufficiency of any bid submitted.

- D. Award and tender of contract, if it be awarded, shall be made within 45 calendar days, unless otherwise specified, after the date of opening of bids.

### **103.02 EXECUTION OF CONTRACT**

Once the contractual agreement is signed by the City and Notice of Award is provided to the successful bidder, the bidder shall furnish a performance bond, a payment bond and proof of filing of a public works bond and such other required bonds and insurances satisfactory to the Owner within 15 days following Notice of Award of the Contract.

### **103.03 FAILURE TO EXECUTE CONTRACT**

- A. Failure on the part of the Bidder to whom the Contract is awarded to deliver the required performance, payment and proof of public works bonds and other required bonds and insurances as provided for in **Subsection 103.02, EXECUTION OF CONTRACT**, shall be just cause for cancellation of the award, withdrawing tender of the Contract and forfeiture of the Bid Guaranty to Owner.
- B. The forfeited Bid Guaranty shall become property of the Owner, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible and responsive Bidder, or the work may be re-advertised, or otherwise, as the Owner may decide.

### **103.04 RETURN OF BID GUARANTY**

- A. Upon the execution of the contract and bond by the successful bidder, the bid guaranty shall be returned. The bidder who is awarded a contract and who fails promptly and properly to execute the contract or bond shall forfeit the bid guaranty that accompanied the bid.
- B. The bid guaranty of unsuccessful bidders will be returned after the bids have been opened and the contract has been awarded, and shall not be retained after the contract has been duly signed. The owner reserves the right to retain the bid security of the three lowest bidders until the award contract has been signed and returned.

### **103.05 TRANSFER OF CONTRACT AND INTERESTS THEREIN**

- A. Excepting Surety assignment under the performance and payment bond, the Contract is not assignable to any other party or parties without the prior written consent of Owner. In case of such attempted transfer without permission, Owner may refuse to carry out the Contract either with the transfer or the transferee, but all rights of action for any breach of the Contract by said Contractor is reserved to the Owner.
- B. Neither officer of Owner, nor any person employed in its service is or shall be permitted any share or part of the Contract or is or shall be entitled to any benefit which may arise from the contract.
- C. Any assignment of money shall be subject to all proper setoffs and withholdings in favor of Owner and to all deductions provided for in the Contract, and particularly all money withheld, whether assigned or not, shall be subject to being used by Owner for completion of the work in the event Contractor should be in default therein.

### **103.06 PERFORMANCE AND PAYMENT BOND**

At the time of execution of the Contract, the Contractor shall furnish a Performance Bond and a Payment Bond and proof of filing of a public works bond with the Construction Contractor's Board, or other such Bonds approved by the Owner and 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.

### **103.07 PROOF OF CARRIAGE OF INSURANCE**

Work shall not commence until all insurance required in the Contract has been obtained and a certificate thereof has been approved by the Attorney. Contract shall maintain insurance throughout the life of the Contract which will hold Owner harmless and shall indemnify Owner for any and all losses to third persons or to Owner arising out of the operations, including any contingent liability arising therefrom.

### **103.08 FOREIGN CONTRACTOR**

A foreign Contractor or non-resident bidder awarded a contract with a price exceeding \$10,000, under provisions of ORS 279A.120, shall promptly report to the Department of Revenue on forms to be provided by the Oregon Department of Revenue the total contract price, terms of payment, length of contract and such other information as may be required before final payment can be received on the public contract. Final payment shall not be made until Owner is satisfied that this provision has been accomplished.

## **104 SCOPE OF WORK**

### **104.01 PLANS AND SPECIFICATIONS**

- A. The Contract Documents will govern the work to be done. Anything mentioned in the Specifications and not shown on the Plans and detailed drawings, or shown on the Plans and detailed drawings and not mentioned in the Specifications, shall be of like effect as though shown or mentioned in both. Specifications and Plans referred to in any of the Contract Documents shall be considered as being included in the document in which such reference is made.
- B. When a particular Standard Plan or Specification is referred to, such reference shall be to the Standard Plan or Specification which is in force at the time of advertising for bids. The phrases, "Contractor shall", "Contractor will", etc. may not always be specifically stated in all paragraphs but is considered understood where not specifically stated otherwise.

### **104.02 PRECEDENCE OF CONTRACT DOCUMENTS**

- A. In case of conflict, the order of precedence of the following documents in controlling the work shall be:
  - 1. Contract
  - 2. Addenda
  - 3. Bid
  - 4. Permits from outside agencies required by law
  - 5. Special Specifications (Provisions)
  - 6. Standard Plans and Standard Details
  - 7. Standard Construction/Technical Specifications
  - 8. City Approved Construction Plans
- B. Change orders and supplemental agreements will take precedence over Contract Documents listed above.

### **104.03 SHOP DRAWINGS AND OTHER SUBMITTALS**

- A. Plans furnished and included with Specifications indicate the work proposed and the results that are intended to be accomplished.

- B. Unless otherwise specified, furnish six copies of all layout, detail, shop and working drawings requested by the City Engineer. Shop drawings shall be of sufficient size and scale to clearly show details. After review and approval by the City Engineer, two copies will be returned to the Contractor.
- C. By approving and submitting shop drawings, product data and samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract Documents and that he has checked and coordinated the information contained within such submittals with the requirements of the work and of the contract documents and that he is satisfied they conform to the contract documents.
- D. All required shop drawings, product data and samples shall be furnished to the City Engineer for his review and any required testing before any of the work or related work is performed or products or material ordered prior to the City Engineer's review and completion of any testing will be at Contractor's risk.
- E. The City Engineer will review all shop drawings, product data and samples and conduct such tests as are required by the contract documents within a reasonable time but in no event will the City Engineer be required to complete such review or conduct such tests in less than 14 days after submission. The City Engineer will return marked-up submittal copies indicating one of the following actions:
  - 1. If review and checking indicate no exceptions, copies will be returned marked "NO EXCEPTIONS TAKEN" and work may begin immediately on incorporating the material or equipment covered by the submittal into the work.
  - 1. If review and checking indicate limited corrections are required, copies will be returned marked "Make Corrections noted," and upon making the corrections noted, work may begin immediately to incorporate the material or equipment covered by the submittal into the work.
  - 2. If review and checking indicate insufficient or incorrect data have been submitted, copies will be returned marked "REVISE AND RESUBMIT." No work may begin on incorporating the material or equipment covered by this submittal into the work until the submittal is revised, resubmitted, and returned marked either "NO EXCEPTIONS TAKEN" OR "MAKE CORRECTIONS NOTED."
  - 3. If review and checking indicate the material or equipment submittal is unacceptable, copies will be returned marked "REJECTED." No work may begin on incorporating the material or equipment covered by this submittal into the work until a new submittal is made and returned marked either "NO EXCEPTIONS TAKEN" OR "MAKE CORRECTIONS NOTED."
  - 4. If review and checking indicate additional information is required, copies will be returned marked "SUBMIT SPECIFIED ITEM." Work may begin immediately on incorporating the material or equipment covered by the submittal into the work, only if it is not affected by the item to be submitted. If any material or equipment is affected, no work may begin on incorporating that material or equipment into the work until it and the submittal are submitted and returned marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED."
- F. The review by the City Engineer of any shop drawings, product data, samples, construction methods and equipment or other submittals is only for conformance with the general design concept of the project and does not extend to consideration of structural integrity, safety, detailed compliance with contract requirements, or any other obligation of the Contractor. Any action shown is subject to the requirements of the plans and specifications.
- G. The contractor is responsible for confirming and correlating all dimensions; fabricating and construction techniques; coordinating his entire work in strict accordance with the contract documents. The review does not relieve Contractor from his obligation fully to perform all contract requirements, nor shall such review give rise to any right of action or suit in favor of Contractor or third persons, against the City Engineer or Owner.



#### **104.04 CHANGES IN THE WORK**

- A. Without invalidating the Agreement and without notice to a surety, Owner may, at any time, order additions, deletions or revisions in the Work: these will be authorized by a written amendment, a Change Order, or a work directive change.
- B. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- C. At any time the contractor encounters a changed condition, situation, or direction that he believes may result in additional contract time or contract cost that he feels is attributable to the Owner, the contract must provide immediate notification to the City's project manager and must provide written notification must be provided within one work day and a written estimate on the impacts upon project cost and project completion to the City's project manager within two work days from first becoming aware or when the individual should have been aware of the changed condition, situation, or direction. If the Contractor fails to provide the required notice and estimate of impact in a timely manner as prescribed above, the City shall be not liable for the additional costs or time caused by the changed condition, situation, or direction. (Resolution 05-10 4/11/05)
- D. If the contractor or any of their personnel accepts direction from the City's project manager that they feel is beyond the scope of the contract and will result in increased cost and/or time to complete the project, the contractor or authorized personnel shall notify the City's project manager immediately of their belief that the direction is a change and is beyond the scope of the contract. The City's project manager is not authorized to require additional work resulting in additional cost to the contract without proper authorization from City management. If the work is directed under Force Account, the strict requirements of **Subsection 104.05, FORCE ACCOUNT WORK**, shall be required. (Resolution 05-10 4/11/05)

#### **104.05 FORCE ACCOUNT WORK**

- A. The Contractor shall perform work on a force account basis upon written notice by the City Engineer.
- B. The Contractor must maintain records in such a manner as to provide a clear distinction between direct cost of work performed on force account basis and costs of all other operations performed in connection with the Contract.
- C. The Contractor shall, on a daily basis, furnish to the City Engineer signed reports itemizing materials used and setting forth the cost of labor and charges for equipment rental, delineating whether said equipment is Contractor or Subcontractor owned. Provide names, identifications, and classifications of workmen, the hourly rate of pay and hours worked, and the size, type, and identification number of equipment and hours of equipment operation.
- D. The Contractor shall substantiate material charges by vendor's invoices, submit such invoices with the reports; or, if not available, submit with subsequent reports. In the event said vendor's invoices are not submitted within 30 days after completion of the force account work owner reserves the right to establish the cost of such materials.
- E. The City Engineer will compare his records with the reports furnished by the Contractor, make any necessary adjustments, compile the costs of work paid for on a force account basis, and issue a change order covering the work.

#### **104.06 SALVAGE**

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

## **105 CONTROL OF WORK**

### **105.01 AUTHORITY OF THE CITY ENGINEER**

- A. The City Engineer will decide all questions which may arise as to quantity, quality, and acceptability of materials furnished and work performed the rate of progress of the work; interpretation of the Plans and Specifications; the measurement of all quantities; and the acceptable fulfillment of the Contract on the part of the Contractor. The City Engineer's estimates, decisions and approval signify favorable opinion and qualified consent; it does not carry with it certification or assurance of completeness, quality or accuracy concerning details. Such approval does not relieve Contractor from responsibility for errors, improper fabrication, improper construction methods, and non-conformance to requirements or for deficiencies within his control.
- B. It is further understood that all work to be done under the Contract will not be considered completed until it has passed final inspection by the City Engineer and is accepted by the Owner. It is further understood that the authority of the City Engineer is such that the contractor shall at all times carry out and fulfill the instructions and directions of the City Engineer insofar as they concern the work to be done under the Contract.
- C. The City Engineer shall have the authority to order unacceptable work to be corrected, removed or replaced, and unauthorized work to be removed and, pending completion of such order, to deduct the estimated cost thereof from any monies due, including retainage, or to become due the Contractor. This authority shall take precedence over any and all requirements of the specifications for payment set forth elsewhere in the specifications.
- D. In the City Engineer's sole discretion, minor defects in the work may be accepted subject to a reasonable deduction from the Contract price or other credits to the owner. Such determination by the City Engineer shall be final.
- E. The City Engineer is not authorized to waive any written notice required of the Contractor by the Contract.

### **105.02 AUTHORITY AND DUTIES OF INSPECTORS**

- A. The City Engineer may appoint assistants to inspect all materials used and all 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. Inspectors will not be authorized to revoke, alter, enlarge, or relax the provisions of the contract. An Inspector is placed on the work to keep the City Engineer informed of progress of the work and the manner in which it is being done. In addition, the Inspector shall call to the attention of Contractor any deviation from the Plans, or Specifications.
- B. An Inspector will not be authorized to approve or accept any portion of the work or to issue instructions contrary to the Plans and Specifications under this Contract. Furthermore, the Inspector is not authorized to waive any written notices required by the Contract. The Inspector will have authority to reject defective material and to suspend any work that is being improperly done, subject to final decision by the City Engineer.

### **105.03 RESPONSIBILITY OF CONTRACTOR**

- A. Do all work and furnish all labor, materials, equipment, tools, and machines necessary for the performance and completion of the project in accordance with the Contract. Be obligated to determine and be responsible for the method of construction.
- B. Contractor shall be solely liable for any accident, loss or damage happening to work referred to in the Contract prior to completion and acceptance thereof.

#### **105.04 NOTIFICATION OF UTILITIES AND AGENCIES**

- A. Obtain prior approval from the City Engineer for closing or partial closing of any street. Give at least two working days advance notice of such closure to all agencies providing emergency services, including without limitation police, fire and ambulance services. Notification shall include, but not be limited to the time of commencement and completion of work, names of streets or location of alleys to be closed, or partially closed, schedule of operations and routes of detours where applicable.
- B. When performing work in streets and easements, whether inside or outside Owner's legal boundaries, notify all of the affected utilities and 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.
- C. The Contractor and its subcontractors must comply with all provisions of ORS 757.541 to ORS 757.571 including notification of all owners of underground facilities at least 48 business day hours but not more than 10 business days before beginning work. Notify the following utilities and agencies in writing at least two working days before commencing any work on the project.
  - 1. City of West Linn Operations Department
  - 2. Northwest Natural Gas Co.
  - 3. Oregon Department of Transportation
  - 4. Portland General Electric Co.
  - 5. Comcast (Resolution 05-10 4/11/05)
  - 6. Qwest Communications (Resolution 05-10 4/11/05)
  - 7. Water Environment Services of Clackamas County
- D. Owner shall relocate or cause to be relocated all privately or publicly owned utility conduits, lines, poles, mains, pipes and such other facilities within the jurisdiction and control of Owner where such relocation is necessary in order to conform said utility and other facilities with the plans and ultimate requirements of the project. If desirable for specific reasons, or for convenience of field operations, contact the above listed utilities.

#### **105.05 UTILITIES AND EXISTING IMPROVEMENTS**

- A. Information shown as to location of existing water courses, drains, sewer lines or utility lines is provided for Contractor's information and convenience and is not, in any way, warranted to be accurate by Owner. Contractor shall verify all such information and shall deal with varying conditions at its own expense.
- B. Operation of water valves and hydrants by unauthorized personnel is strictly prohibited. Obtain written permission from and pay any fee required from the Water Authority in whose jurisdiction the work is being performed prior to using hydrant water.
- C. Provide for the flow of sewers, drains, or water courses interrupted during the progress of the work, and restore such drains or water courses as approved by the City Engineer, at no additional cost to Owner.
- D. Be responsible for all costs for the repair of any and all damage to any utility, whether previously known or disclosed during the work, as may be caused by the work. Maintain in place utilities not shown on the drawings to be relocated or altered by others. If Contractor requires temporary relocation, for his convenience or because of his method of construction or as a result of site conditions, Contractor shall bear all costs for said temporary relocation. Maintain utilities which have been relocated by others in their relocated positions in order to avoid interference with structures which cross the project work.
- E. Make excavations and borings ahead of work, as necessary, to determine the exact location of interfering utilities or underground structures. When this is not feasible or practical or the need for such work was not

foreseen, the utility owners or the Owner shall have the right to enter upon the right-of-way and upon any structure therein for the purpose of making new installations, changes or repairs. Conduct operations so as to provide the time needed for such work to be accomplished during the progress of the improvement, at no additional cost to the owner.

- F. It is understood that there will be interfering utilities, service laterals, and other underground pipes, drains or structures encountered on underground projects that are not shown or are shown incorrectly on the plans and/or have not been previously discovered in the field. Contractor agrees this is a normal and usual occurrence in the construction of underground improvements. Furthermore, bidders understand and agree that work in some cases must be done in close proximity to said utilities and underground pipes, drains, and structures not shown or shown incorrectly on the plans which may require a change in operations and may cause sloughing of the trench, additional traffic control, additional pavement and backfill costs, and time; the Contractor agrees that a reasonable number of these occurrences are usual and ordinary on underground projects and are reflected in the bid and plan of operation.
- G. The City Engineer will require a reasonable amount of time to perform design changes necessitated by directly conflicting utilities and/or the utility owners will require a reasonable amount of time to make necessary utility relocations.
- H. The Bidders agree to provide for these conflicts and interferences and agree to provide for a reasonable amount of time for design changes and/or utility relocations due to said interference in the bid and understand that no additional compensation for interruption of schedule, extended overhead, delay or any other impact claim or ripple effect or any other costs whatsoever or additional time will be made for these conflicts or interferences.

#### **105.06 SURVEY SERVICE**

- A. Give notice to the City Engineer not less than three working days in advance of when survey services will be required in connection with the laying out of any portion of the work.
- B. The City Engineer will furnish and set construction stakes establishing lines and grades as he determines necessary for all work under the Contract.
- C. The City Engineer will furnish appropriate offset lines and grades as he deems necessary for all projects involving trenching operations. Contractor will be responsible for the transfer of the offset lines or grades into the ditch, to batterboards, or any other point within the work. Work done without lines and grades having been established by the City Engineer or work done beyond the lines and grades will be considered as unauthorized and will not be paid for and may be ordered removed, replaced, or corrected at no expense to the Owner.

#### **105.07 PROTECTION OF SURVEY MARKERS**

##### **105.07.01 Permanent Survey Markers**

- A. Notify the City Engineer not less than three working days prior to starting work in order that the City Engineer may take necessary measures to ensure the preservation of survey monuments, stakes, lot stakes and bench marks. Do not disturb permanent survey monuments, stakes, lot stakes or bench marks without the consent of the City Engineer, and notify the City Engineer and bear the expense of replacing any that may be disturbed.
- B. When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, preserve the monument and adjust the monument cover to the new grade at no expense to Owner.

### **105.07.02 Construction and Survey Markers**

- A. Preserve construction survey stakes and marks for the duration of their usefulness during construction. If any construction survey stakes are lost or disturbed through negligence of Contractor, and in the judgment of the City Engineer need to be replaced, such replacement shall be by the City Engineer at the expense of Contractor.
- B. The cost of replacement shall be charged against, and shall be deducted from payments for Contract work.

### **105.08 PROTECTION OF PROPERTY**

- A. Protect all public and private property, insofar as it may be endangered by operations and take every reasonable precaution to avoid damage to such property.
- B. Restore and bear the cost of any public or private improvement, facility, structure, or land and landscaping within the right-of-way or easement which is damaged or injured directly or indirectly by or on account of an act, omission, or neglect in the execution of the work. Restore to a condition substantially equivalent to that existing before such damage or injury occurred, by repairing, rebuilding, or otherwise effecting restoration thereof, or if this is not feasible, make a suitable settlement with the Owner of the damaged property.
- C. Give reasonable notice to occupants of buildings on property adjacent to the work to permit the occupants to remove vehicles, trailers and other possessions as well as salvage or relocate plants, trees, fences, sprinkler systems, or other improvements in the right-of-way which are designated for removal or which might be destroyed or damaged by work operations.
- D. Protect all designated trees, lawns and planted areas within the right-of-way or easements. Required tree protection practices are contained in the West Linn Tree Technical Manual. Restore all on-surface disturbed areas, by methods as set forth in the technical specifications. If conditions are such that the method specified cannot be done, provide erosion control surface covering of such quality and quantity as will prevent erosion from occurring, without adverse impacts to the environment, if required by conditions existing at the site, at no additional cost to the Owner.
- E. Review with the City Engineer the location, limits and methods to be used prior to clearing work. Clearing and grubbing shall be performed in strict compliance with all local, State and Federal laws and requirements pertaining to clearing and burning, and particularly in conformity with the provisions of ORS Chapter 477, and all subsequent amendments, which require, among other things, filing with the State Forester a general description of the right-of-way to be cleared before the start of clearing operations. Obtain the required permit from the State Forester and perform clearing work in conformance thereto.

### **105.09 USE OF WORK DURING CONSTRUCTION**

- A. Owner shall have the right to take possession of and use any completed or partially completed portions of the Work. Such use shall not be considered as final acceptance of the Work or portions thereof.
- B. Such action by Owner will not relieve the Contractor of responsibility for injury or damage to said completed portions of the work resulting from use by public traffic, action of the elements, Contractor's operations, defective work, or negligence, or from any other cause, except for injury or damage resulting from Owner's negligence.
- C. Contractor will not be required to again clean up such portions of the Work prior to final acceptance, excepting for such clean up as results from Contractor's operations or defective work. Use of any completed or partially completed portions of the work does not relieve Contractor from the warranty responsibility nor shall the warranty period commence to run until final completion and acceptance of the work.

### **105.10 FURNISHING TEMPORARY SERVICES AND FACILITIES**

- A. Contractor shall install, furnish and maintain temporary light, power, water and any temporary services or facilities complete with connecting piping, wiring, lamps, and similar equipment during construction of the work, including testing and start up.
- B. Contractor shall remove temporary facilities upon completion of work.
- C. Contractor shall obtain all permits and bear all costs in connection with temporary services and facilities. The work shall conform to applicable statutes, rules, codes, and other requirements in the use of these facilities.

### **105.11 VERBAL AGREEMENTS OR REPRESENTATIONS**

No verbal agreement or conversation by or 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 is in no way binding upon Owner.

### **105.12 WATER AND AIR POLLUTION CONTROL**

- A. During the term 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, City of West Linn Erosion Control Plans, as well as other local Ordinances and Resolutions designed to prevent, control, and abate water and air pollution.
- B. During all phases of the work, or when directed, 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 which may become airborne or may be washed into waterways or drainage systems.

### **105.13 NOISE**

Conform and comply with applicable noise regulations as established in the City of West Linn Municipal Code 5.487 in order to reference the changes implemented by the Noise Ordinance 10/04. (Resolution 05-10 4/11/05)

### **105.14 ACCESS TO THE WORK**

- A. Provide access to the work for representatives of the owner, the State of Oregon, the Federal Government, and other entities having jurisdiction in the area.
- B. Allow access to the City Engineer or his representatives to all parts of the work and to plants of manufacturers at all times. Furnish them with every reasonable facility for ascertaining if the work meets requirements and intent of the Contract.

### **105.15 DEFECTIVE OR UNAUTHORIZED WORK**

- A. All work which does not conform to the requirements of the Contract shall be considered as unacceptable.
- B. Upon discovery immediately remove unacceptable and defective work and replace by work and materials which conform to the Contract. This provision shall have full effect regardless of the fact that the unacceptable work may have been done or the defective materials used with the full knowledge of the Inspector.

## **105.16 WORK IN THE RIGHT OF WAY OR CITY-MANAGED PUBLIC EASEMENT**

- A. Any time development requires access to work in the public right-of-way (ROW) or a City –managed public utility easement, the contractor is required to develop and submit a plan and schedule to the Public Works Engineering Public Improvements Program (PIP) Manager for review and approval. This plan must be submitted prior to the commencement of any work and in sufficient time for a complete review by the Public Works staff.
- B. The plan will be in sufficient detail for staff to determine if the plan is complete and functional. The City's Public Works Director/City Engineer will be the final approval authority for the plan. Depending on the complexity and impact, time may be required for discussions with the City Council and/or appropriate neighborhood associations.
- C. Once the plan is approved, any deviation must be reviewed and recommended for approval by the PIP Manager and approved by the Public Works Director/City Engineer. If the contractor fails to adhere to the approved plan, the City of West Linn has the right to require immediate restoration of the ROW for the citizens of West Linn. If the contractor fails to comply with immediate restoration of the ROW, the City of West Linn has the right to restore the ROW at the contractor's expense.

## **106 CONTROL OF MATERIALS**

### **106.01 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 QUALITY OF WORK**

Materials, parts, products and equipment which are to be incorporated into the work shall be new and shall conform to the Contract Documents.

### **106.03 SAMPLING AND TESTING**

- A. Tests of the work may be made by Owner at any time during construction of the work or during the production, fabrication, or preparation and use of materials, parts, products and equipment.
- B. Owner reserves the right to require samples and to test products for compliance with pertinent requirements irrespective of prior certification of the products by the manufacturer.
- C. When such tests of the work are necessary, as determined by the City Engineer, such tests will be made by and at the expense of Owner unless otherwise specified. Provide such facilities and cooperate as required for collecting and forwarding samples and do not incorporate into the work until tests have been made and found acceptable. In all cases furnish the required samples without charge and in ample time to permit testing prior to use. Contractor shall provide safety measures and devices to protect those who take the samples.
- D. In the absence of any reference Specification it shall be understood that materials shall meet the Specifications and requirements of the American Society for Testing and Materials (ASTM), or the American Association of State Highway and Transportation Officials (AASHTO), as directed by the City Engineer. When there is no pertinent coverage under ASTM or AASHTO, the material concerned shall meet Specifications and requirements of applicable Commercial Standards of the Commodity Standards Division of the U.S. Department of Commerce. Lacking such coverage, materials shall meet requirements established by reputable industry for a high-quality product of the kind involved.

- E. All testing shall be performed by the testing laboratory or by the City Engineer or as directed by the City Engineer.
- F. In the event the City Engineer requests tests and the work fails, the contractor shall bear all costs for this test and all subsequent testing necessary to meet specified requirements.

#### **106.04 CERTIFICATION**

The City Engineer in his sole discretion may in lieu of any other required sampling and testing accept from contractor two copies of the manufacturer's certification with respect to the product involved, under conditions set forth as follows:

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

#### **106.05 INSPECTION BY OTHERS**

Inspection of work by persons other than representatives of the Owner will not constitute inspection by Owner.

#### **106.06 STORAGE AND PROTECTION OF ITEMS OF WORK**

Contractor shall store items to be incorporated into the work to assure the preservation of their quality and fitness for the work. Stored items, even though approved before storage, may be reinspected and are subject to rejection prior to being incorporated into the work. Stored items shall be located so as to facilitate their prompt inspection.

#### **106.07 TRADE NAMES, EQUALS OR SUBSTITUTIONS**

- A. In order to establish a basis of quality, certain processes, types of machinery or equipment or kinds of materials may be specified either by description of process or by designating a manufacturer by name and referring to his brand or product designation or by specifying a kind of material. It is not the intent of these specifications to exclude other processes, equipment or materials of equal value, utility or merit.
- B. Whenever a process is designated or a manufacturer's name, brand or item designation is given or whenever a process or material covered by patent is designated or described, it shall be understood that the words "or equal" follow such name, designation, or description, whether in fact they do so or not. This "or equal" clause is not a warranty, either expressed or implied by Owner that an equal exists.
- C. The Contractor may offer to furnish materials or equipment of equal or better quality and performance other than that specified as a substitute after the contract is executed. If the offer necessitates changes to or coordination with any other portion of the work, the data submitted shall include drawings and details showing all such changes. Contractor agrees to perform these changes as part of the substitution of material or equipment.
- D. Acceptance by the City Engineer shall not relieve the Contractor from full responsibility for the efficiency, sufficiency, quality and performance of the substituted material or equipment in the same manner and degree as the material and equipment specified by name. Any cost differential associated with a substitution shall be reflected in the Contract price and the contract shall be appropriately modified by Change Order.



- E. If the Bid includes a list of equipment, materials or articles for which Contractor must name the manufacturer at time of submission of the bid, no substitutions therefore will be permitted.
- F. All materials or equipment of equal or better quality offered by the Contractor for substituting shall be approved by the City Engineer prior to incorporation into the project.

## **107 LEGAL RELATIONS AND RESPONSIBILITIES**

### **107.01 LAWS AND REGULATIONS**

- A. Contractor shall comply with all Federal and State laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of work. Observe and comply with all such laws, ordinances, regulations, orders and decrees. Protect and indemnify Owner and his representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by Contractor, his subcontractors, suppliers of materials or services, or others engaged by the Contractor, or their employees.
- B. In addition to those set forth herein, the Statutes of the State of Oregon for public works contracts, Chapters 279A and 279C, are incorporated by reference into the Contract.

### **107.02 SUBCONTRACTORS**

- A. After contract award and notice of contractor subcontractor agreements have been submitted, work shall not be transferred or subcontracted without prior consent of Owner.
- B. Use of subcontractors, material suppliers or equipment suppliers shall in no way release Contractor from any obligations of contract with Owner.
- C. Contractor will provide in all subcontract agreements that the Subcontractor, material supplier and equipment supplier will be bound by the terms and conditions of this Contract to the extent that they relate to the Subcontractor's work, material or equipment. All Subcontractors' agreements will also provide that they are assignable to the Owner at Owner's option, in the event this agreement is terminated for default of Contractor.

### **107.03 NO WAIVER OF LEGAL RIGHTS**

- A. 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.
- B. Owner shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate, or payment in accordance therewith, from recovering from the Contractor and his Sureties such damages as it may sustain by reason of his failure to comply with terms of the Contract, or from enforcing compliance with the Contract.
- C. 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.
- D. A waiver of any breach of the Contract shall not be held to be a waiver of any other breach.

#### **107.04 OTHER CONTRACTS**

- A. The Owner reserves the right to award other contracts or issue permits for work that may require coordination with the work to be performed under this contract.
- B. When separate contracts or permits are awarded or issued for different portions of the Project, "the Contractor" in the contract documents in each case shall be the contractor who signs each separate contract.
- C. Mutual Responsibility of Contractors - The contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his Work with theirs.
- D. If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate Contractor, the Contractor shall inspect and promptly report to the City Engineer any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to inspect and report shall constitute an acceptance of the other Contractor's work as fit proper to receive the Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.
- E. Should the Contractor cause damage to the work or property of any separate contractor which results in a claim against the Owner, and if the claim is not satisfied by contractor and the separate contractor sues the Owner or initiates an arbitration proceeding on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend if requested such proceedings at the contractor's expense, and if any judgment or award against the Owner arises therefrom the contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court or arbitration costs which the Owner has incurred.
- F. The Contractor shall be responsible for any cutting, fitting and patching that may be required to complete the Work except as otherwise specifically provided in the Contract. The Contractor shall not endanger any work of any other contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other contractor. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.
- G. If a dispute arises between the separate contractors as to their responsibility for cleaning up, the Owner may clean up and charge the cost thereof to the several contractors as the City Engineer shall determine to be just.

#### **107.05 LIABILITY AND INDEMNIFICATION**

- A. The Contractor shall assume all responsibility for the work and shall bear all losses and damages directly or indirectly resulting to the Contractor, to the Owner, to the City Engineer, and to their officers, agents, and employees on account of the character or performance of the work, unforeseen difficulties, accidents, or any other cause whatsoever.
- B. The Contractor shall defend, indemnify, and hold harmless the Owner, the Design Engineer, and their officers, agents and employees from all claims, loss, damage, and injury of every kind directly or indirectly arising out of this Contract. The Contractor shall assume this responsibility even if fault is the basis of the claim, and any act, omission or conduct of the Owner connected with the Contract is a condition or contributory cause of the claim, loss, damage or injury.
- C. The Contractor shall not be liable for, nor be required to defend, or indemnify the Owner or the Design Engineer relative to any claim, loss, damage, or injury resulting solely from acts or omissions by the Owner, the Design Engineer, or their officers, agents or employees. The Contractor shall not be liable for, not be required to defend, or indemnify the Owner or the Design Engineer relating to any claim loss, damage, or injury arising from the use of any maps, drawings, reports, surveys, designs, or specifications furnished by the Owner, Design Engineer, or their officers, agents, or employees.
- D. Any specific duty or liability imposed or assumed by the Contractor, as may be otherwise set forth in the Contract documents, shall not be construed as a limitation or restriction of the general liability or duty imposed upon the Contractor by this section.

- E. The Contractor shall assume all responsibility for the work.

## **107.06 INSURANCE**

### **107.06.01 General**

- A. The Contractor shall provide and maintain during the life of this Contract the insurance coverage designated hereafter. All costs for such insurance shall be born by the Contractor and shall be included in the contract price.
- B. Prior to execution by the Owner and before commencing work under this Contract, Contractor shall furnish the City Engineer with certificates of insurance specified herein showing the name of the insurance carrier, coverage, type, amount (or limits), policy numbers, effective and expiration dates, description of operations covered, and containing substantially the following cancellation provision:
- C. "The insurance covered by this certificate will not be canceled or materially reduced, except after 30 days written notice has been received by the Owner."
- D. In case of the breach of any provision of this Article, the Owner, at its option, may take out and maintain, at the expense of the Contractor, such insurance as the Owner may deem proper. The Owner may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Contract.

### **107.06.02 Review and Approval of Insurance**

- A. The Contractor shall not commence work under this Contract nor allow any subcontractor to commence work on a subcontract until [it] the Contractor has obtained all the insurance required hereunder and such insurance has been approved by the Attorney.
- B. All policies or insurance and certificates of insurance shall be satisfactory to the Owner. Approval of the insurance shall not relieve or decrease the liability of the Contractor hereunder.

### **107.06.03 Workers' Compensation, the Federal Longshoremens' and Harborworkers' Act and the Federal Jones Act**

- A. The Contractor shall provide and shall require all subcontractors to provide workers' compensation coverage for all persons employed under this Contract including the Contractors' partners and any individual regardless of relation to the Contractor's partners and any individual regardless of relation to the Contractor or to the partners who provide work under this Contract. The Contractor shall be required to assure that subject workers will receive the compensation for compensable injuries provided in ORS Chapter 656 either by:
  - 1. A carrier-insured employer; or
  - 2. A self-insured employer as provided by ORS 656.407.
- B. In addition to the statutory benefits outlined above, the Contractor and all subcontractors shall provide employers' liability insurance with limits of not less than:
  - 1. \$100,000 each accident for bodily injury by accident
  - 2. \$100,000 each employee for bodily injury for disease
  - 3. \$500,000 policy limit for bodily injury by disease
- C. Evidence of such coverage, including the guaranty or warrant period, shall be filed with the City and maintained for the duration of the Contract.

- D. The Contractor shall defend, indemnify, and hold harmless, the City and the City's officers, agents, and employees against any liability that may be imposed upon them by reason of the Contractor's or subcontractor's failure to provide workers' compensation and employers liability coverage.
- E. Where work under this Contract is subject to the Federal Longshoremens' and Harborworkers' Act or the Federal Jones Act, the Contractor shall provide coverage for such exposure.

#### **107.06.04 General Liability and Automobile Liability**

- A. The Contractor shall provide a general liability policy that provides coverage for bodily injury including personal injury and property damage liability insurance and automobile liability insurance. Such insurance must protect the Contractor, the Owner, and their officers and employees from all things or damage which may arise out of this Contract or in connection therewith, including all operations of Subcontractors. Such insurance shall provide coverage for not less than the amounts for which public bodies are responsible as set forth in ORS Chapter 30, Tort Actions against Public Bodies, but in no event less than the following limits of liability.
  - 1. \$1,000,000 each occurrence
  - 2. \$1,000,000 general aggregate
  - 3. \$1,000,000 product and completed operations aggregate
  - 4. \$1,000,000 personal and advertising injury
  - 5. \$1,000,000 combined single limit automobile liability for owned, non-owned, and hired automobiles.
- B. The policy shall contain an endorsement that the aggregate applies separately to this Contract.
- C. The insurance shall be written on a comprehensive form which includes broad form property damage on an occurrence basis. Unless excluded by Special Specification, the general liability policy shall include, without deductible, coverage for premises operations, explosion and collapse hazard, underground hazard, products, completed operations, contractual insurance, and independent contractors. Such insurance shall be maintained until the expiration of the guaranty period required by the Contract. Failure to maintain liability insurance as provided above shall, at Owner's option, be cause for immediate termination of the Contract.
- D. The Contractor shall provide a letter from the insurance company which states that such insurance shall be without prejudice to coverage otherwise existing.
- E. The City of West Linn, its officers, agents, and employees, shall be named additional insureds in the Contractor's General Liability Insurance policy by attaching ISO Endorsement number CG 20 09 11 85 ADDITIONAL INSURED - Owners, Lessees, or Contractors (Form A) or its equivalent.
- F. The policy shall also provide for a Cross Liability Endorsement or Separation of Insureds Endorsement.
- G. The policy shall be endorsed to provide an AMENDMENT - AGGREGATE LIMITS OF INSURANCE (per project) specifying that a separate aggregate limit of liability applies to this Contract.
- H. If there are insufficient insurance proceeds and assets of the Contractor to fully indemnify the City of West Linn, its officers, employees, agents, and the City Engineer, then the City, its officers, employees, and agents would be indemnified first with any remaining insurance proceeds and assets to be used to indemnify the City Engineer.
- I. If set forth in the Special Specifications, additional insureds may be the Owner's consultant, engineer, other governmental bodies with jurisdiction in the area involved in the project, and their officers and employees and such agents as may be specified.

#### **107.06.05 Claims on Project**

The Contractor, when notified of a claim by an affected party shall

1. Refer claim to the Contractor's insurance carrier or claims administrator.
2. Contractor's insurer will copy Owner on acknowledgment of claim.
3. Contractor's insurer will copy Owner on notice to claimant of disposition of claim.

**107.06.06 Builders Risk Insurance**

- A. During construction, Contractor shall obtain and maintain for the benefit of the parties to the Contract as their interest may appear, all-risk Builder's Risk insurance to the extent of 100% of the value of the project. Coverage shall also include:
  1. Formwork in place
  2. Form lumber on site
  3. Temporary structures
  4. Equipment
  5. Supplies related to the work while at the site
- B. Such insurance shall be endorsed to require thirty days' written notice to the City prior to cancellation or change of the policy. One copy of the policy and two certificates of such insurance shall be delivered to the City before commencing work and shall be subject to review and approval by the City. The City may temporarily waive delivery of the copy of the policy. In the event Contractor fails to maintain such insurance, the City may arrange therefore; and any premium incurred shall be to the account of Contractor.

**107.07 ROYALTIES AND PATENTS**

Pay all royalties and license fees required to perform the Work. Defend and indemnify Owner, from all loss or damage that may result from the Contractor's wrongful or unauthorized use of any patented article or process.

**107.08 PERMITS**

Secure all Municipal, County, State, Federal or other permits or licenses, necessary or incident to performance of the work under this Contract. Comply with all permit requirements pertaining to the project.

**107.09 COMPLIANCE WITH OREGON REVISED STATUTES CHAPTER 279A AND 279C (PUBLIC CONTRACTING)**

- A. Comply, and require all Subcontractors to comply with the city's public contracting requirements, the requirements of the applicable State statutes, and be subject to the applicable liabilities provided in Oregon Revised Statutes Chapter 279A and 279C (Public Contracting), such as, but not limited to, the statutes that are numbered and referenced, and incorporated herein by an abbreviated subject matter, and listed below and the statutes required to be set forth as conditions in public contracts, which follows.
  1. ORS 279A.110 Discrimination in subcontracting prohibited; remedies
  2. ORS 279A.120 Preference for Oregon goods and services; nonresident bidders
  3. ORS 279A.125 Preference for recycled materials
  4. ORS 279C.505 Conditions concerning payment, contributions, liens, withholding, drug testing
  5. ORS 279C.510 Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching

6. ORS 279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints
  7. ORS 279C.520 Condition concerning hours of labor
  8. ORS 279C.525 Provisions concerning environmental and natural resources laws; remedies
  9. ORS 279C.530 Condition concerning payment for medical care and providing workers' compensation
  10. ORS 279C.555 Withholding of retainage
  11. ORS 279C.560 Form of retainage
  12. ORS 279C.580 Contractor's relations with subcontractors
  13. ORS 279C.585 Authority to substitute undisclosed first-tier subcontractor; circumstances; rules
  14. ORS 279C.830 Provisions concerning prevailing rate of wage in specifications, contracts and subcontracts; applicability of prevailing wage; fee; bond
  15. ORS 279C.838 Applicability of state and federal rates of wage; determination of site of project; determination of applicability of wage to transportation workers; waiver
  16. ORS 279C.840 Payment of prevailing rate of wage; posting of rates and fringe benefit plan provisions
  17. ORS 279C.845 Certified statements regarding payment of prevailing rates of wage; retainage
  18. ORS 279C.855 Liability for violations
- B. See Appendix A for the statutes required as conditions in public contracts.

### **107.10 LABOR**

- A. Upon notification in writing from the City Engineer, remove immediately from the job for its duration any laborer, workman, mechanic, foreman, superintendent, or other person employed who is found to be incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fails or refuses to perform his work properly or acceptably.
- B. Comply with provisions of Owner's Equal Opportunity Policy and with ORS Chapter 659A 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, which states that it is unlawful employment practice for any employer, because of the race, religion, color, sex, or national origin of any individual, to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

### **107.11 OVERTIME**

- A. In addition to the requirement set forth in Specification 107.09 (ORS 279C.520), Contractor shall notify the City Engineer of any overtime operations as soon as possible. The Contractor must provide documentation to the City Engineer's satisfaction justifying the overtime work.
- B. In the event that the Contractor wishes to proceed with an overtime operation, the Contractor must first notify and obtain approval from the City Engineer to do so, prior to commencing such work.
- C. For overtime work requested by the Contractor, the Contractor shall pay the applicable wage rate for the City Engineer's Inspector, engineering and operations personnel, and other staff required at the project during the overtime hours.

- D. This section does not apply to labor performed in the manufacture or fabrication of any material ordered by the Contractor or manufactured or fabricated in any plant or place other than the place where the main Contract is to be performed.

## **107.12 SAFETY**

### **107.12.01 Employee Safety**

- A. The Contractor shall at all times be responsible for the safety of his employees and his subcontractor's employees. The Contractor shall maintain the job site and perform the work in a manner which meets the Owner's responsibility under statutory and common law for the provision of a safe place to work and which complies with the Owner's written safety regulations, if any.
- B. Conduct the project with proper regard for the safety and convenience of the public. When the project involves use of public ways, provide necessary flag persons and install and maintain means of reasonable access to all fire hydrants, service stations, warehouses, stores, houses, garages and other property.
- C. Private residential driveways shall be closed only with approval of the City Engineer or specific permission of the property owner.
- D. Do not interfere with normal operation of public transit vehicles unless otherwise authorized. Do not obstruct or interfere with travel over any public street or sidewalk without approval.
- E. At all times provide open trenches and excavations with secured and adequate barricades or fences of an approved type which can be seen from a reasonable distance. Close up or plate all open excavations at the end of each working day in all street areas unless approved otherwise by the City Engineer and in all other areas when it is reasonably required for public safety or as directed by the City Engineer. At night, mark all open work and obstructions by lights. Install and maintain all necessary signs, lights, flares, barricades, railings, runways, stairs, bridges and facilities.
- F. Observe all safety instructions received from the City Engineer or governmental authorities, but following of such instructions shall not relieve Contractor from its responsibility or liability for accidents to workmen or damage or injury to person or property.

### **107.12.02 Public Safety and Convenience**

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

### **107.12.03 Safety Program**

- A. The Contractor shall adopt a written safety program complying with the requirements of employee and public safety set forth hereinabove and as described in the Special Conditions.
- B. The Safety Program shall also comply with Oregon Administrative Rules (OAR) Chapter 437, Division 3, Rules 1926.20 through 1926.34 regarding general safety and health provisions.

### **107.13 RIGHTS-OF-WAY, EASEMENTS, AND PREMISES**

- A. Confine construction activities within property lines, right-of-way, limits of easements and limits of construction permits as shown or specified in the Contract Documents unless arrangements are made with owner(s) of adjacent private property. If additional space or property is needed to accommodate Contractor's method for construction of the Work or for the convenience of the Contractor, Contractor shall bear all related costs and responsibilities. Prior to the use of any private property outside the specified boundaries, file with the City Engineer written permission from the property owner(s).
- B. Do not unreasonably encumber the specified work areas with materials and equipment. Obtain and bear the costs of permits for special occupancy and use of the specified work areas from the proper agencies. Comply with all requirements regarding signs, advertisements, fires and smoking.

### **107.14 MAINTENANCE AND WARRANTY**

- A. In addition to and not in lieu of any other warranties required under the Contract make all necessary repairs and replacements to remedy, in a manner satisfactory to the City Engineer and at no cost to Owner, any and all defects, breaks, or failures of the Work occurring within eighteen months following the date of substantial completion due to faulty or inadequate materials or workmanship. Repair damage or disturbances to other improvements under, within, or adjacent to the work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing his duties and obligations under this Contract when such defects or damage occur within the warranty period. The eighteen month maintenance period required shall, with relation to such required repair, be extended two years from the date of completion of such repair.
- B. If Contractor, after written notice, fails within 10 days to proceed to comply with the terms of this section, Owner may have the defects corrected, and Contractor and Contractor's Surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City Engineer, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of repairs. Failure of the City Engineer to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.
- C. In addition to provisions A and B above, City of West Linn waterline facilities installed by the contractor under this contract that require repair or replacement during the two-year maintenance period shall be repaired by the Owner or under the direction of the Owner and the contractor and contractor's surety shall be liable for all expenses incurred.
- D. In addition to provisions A and B above, all water quality facilities or areas built or improved by the contractor that require repair, maintenance, or replacement during a two year maintenance period shall be repaired in a manner satisfactory to the City Engineer by the contractor and the contractor and contractor's surety shall be liable for all expenses incurred. Water quality areas include, but are not limited to, improved wetlands and transition areas, ponds, swales, and rain gardens. Repair damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing his duties and obligations under this Contract when such defects or damage occur within the warranty period. The 2 year maintenance period required shall, with relation to such required repair, be extended two years from the date of completion of such repair.

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

### **108.01 CONTRACTOR'S CONSTRUCTION SCHEDULE**

- A. Within 30 days of Contract award or one week in advance of starting work, whichever is earlier, SUBMIT FOR WRITTEN APPROVAL a proposed construction schedule to the City Engineer. Contractor may not commence



work until construction schedule is approved by the City Engineer. If it is desirable to carry on operations in more than one location simultaneously, submit a schedule for each location at least one week in advance of beginning such operations. In the event that the Contractor's proposed construction schedule does not meet the necessary construction program schedule as determined by Owner, immediately resubmit a schedule that conforms as approved. Contractor shall not commence work until schedule is approved by the City Engineer.

- B. 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 and 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.

### **108.02 PRECONSTRUCTION CONFERENCE**

Attend a preconstruction conference, if requested, at a time, prior to start of work, designated by the City Engineer. Comply with information and instructions provided at the preconstruction conference as recorded in the minutes of the meeting.

### **108.03 NOTICE TO PROCEED**

- A. Unless stated otherwise in the Special Specifications, written Notice to Proceed will be given by the City Engineer within 30 days after the Performance and Payment Bond and all required insurances have been filed with and approved by the Owner and the Contract has been executed. Do not commence work under the Contract until such written notice has been given.
- B. Notice to proceed may be delayed up to an additional 30 days (for a total of 60 days) from date of Contract by the City Engineer if, in the City Engineer's opinion, necessary easements or permits have not been obtained, or required utility relocation, construction, or reconstruction has not been completed or has not progressed to a degree that will allow initial contract work to commence.
- C. Commence work within 10 working days after the date of the Notice to Proceed, or such other date as may be fixed by the Notice to Proceed, which date shall establish the date for commencement of the Contract time. Notify the City Engineer 48 hours in advance of the time and place work will be started.

### **108.04 CONTRACT TIME**

- A. Time shall be considered the essence of the Contract.
- B. Upon commencement of work, Contractor shall provide adequate labor, materials, equipment, and work shall be performed vigorously and continuously in accordance with a schedule which will ensure completion within the specified time limit. Failure to diligently pursue the work may jeopardize additional contract time.

### **108.05 SUSPENSION OF WORK**

#### **108.05.01 Work is suspended for convenience**

- A. Temporarily suspend work on the Project wholly or in part for convenience of Owner as directed by the City Engineer. In the event of such suspension, the City Engineer shall, except in emergency, and except as hereinafter provided, give Contractor three days notice. Work shall be resumed within five days after notice has been given by the City Engineer to Contractor to do so.
- B. The City Engineer shall allow Contractor an extension of time for completion corresponding to the total period of temporary suspension, and shall reimburse Contractor for necessary rental of unused equipment, services of watch persons, and other unavoidable expenses accruing by reason of the suspension, as stipulated in **Subsection 108.06, DELAYS AND EXTENSIONS OF TIME.**

**108.05.02 Work is suspended by the City Engineer**

- A. Immediately suspend work on the project, wholly or in part, as directed by the City Engineer, for reasonable periods of time as the City Engineer may deem necessary, when conditions are unsuitable for satisfactory performance of the work.
- B. The Owner shall allow the Contractor an extension of time for completion corresponding to the total period of suspension, but the Contractor shall not be entitled to reimbursement for any costs or damages arising under this clause.

**108.05.03 Work is suspended for cause**

Immediately suspend work on the Project wholly or in part as directed by the City Engineer for such periods as the City Engineer may deem necessary due to:

- 1. Failure to correct unsafe conditions for working personnel, the general public, or Owner's employees
- 2. Failure to immediately correct defective and unacceptable work in accordance with **Subsection 105.15, DEFECTIVE OR UNAUTHORIZED WORK.**
- 3. Failure to carry out provisions of the Contract Documents
- 4. Failure to carry out orders or directives

**108.05.03 Voluntary suspension by Contractor**

- A. There shall be no voluntary suspension or slowing of operations without the prior written approval of the City Engineer and such approval shall not relieve Contractor from the responsibility to complete the Contract work within the prescribed Contract time.
- B. Should operations be discontinued, Contractor shall notify, in writing, the City Engineer at least 24 hours in advance of resuming operations.

**108.05.04 Responsibilities of Contractor**

- A. At the commencement of and during any suspension of Work, protect all work performed to prevent any damage or deterioration of the Work. Provide temporary protection devices to warn, safeguard, protect, guide and inform traffic during suspension, the same as though the work had been continuous and without interferences.
- B. Bear all costs for providing suitable provisions for traffic control and for maintenance and protection of the work during suspension unless the suspension was for convenience.
- C. In all cases of suspension, except voluntary suspension by Contractor, work will be resumed only upon written order of the City Engineer or Owner.

**108.06 DELAYS AND EXTENSIONS OF TIME**

- A. If the Contractor is significantly delayed due to court orders enjoining the prosecution of this Project, unavoidable strikes, Acts of God, unusual and extraordinary action of the elements that are of such severity to stop all progress of the work, or act or neglect of Owner not authorized by the Contract, the Contractor shall, within 48 hours of the start of the occurrence, give notice to the City Engineer of the cause of the potential delay and estimate the possible time extension involved. The Contractor shall give notice to the City Engineer of any actual time extension requested as a result of the aforementioned occurrence within 10 days after the cause of the delay has been remedied.
- B. No extension of time will be considered for weather conditions normal to the area and time of year in which the work is being performed. Delays in delivery of equipment or material purchased by the Contractor or his Subcontractors (including Owner-selected equipment) shall not be considered as a just cause for delay, when

timely ordering would have made the equipment available. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials. Extensions of time will be considered for delayed delivery of Owner specified equipment "without equal".

- C. Within a reasonable period after the Contractor submits to the City Engineer a written request for an extension of time the City Engineer will make the decision on each request, for City Manager approval.
- D. An adjustment of Contract time as herein provided shall be the Contractor's sole remedy for any delay in completion of the project arising from causes beyond the control of the Contractor, except for unreasonable delay caused by acts or omissions of the Owner or persons acting therefor. In no event shall the Contractor be entitled to collect or recover any damages, loss or expense incurred by reason of such delay, except for an unreasonable delay caused by acts or omissions of the owner or persons acting therefore. However, if Contractor is delayed due solely to a breach by Owner, Contractor will be entitled to recover damages limited to reimbursement for necessary rental of unused equipment, services of watch persons, documented direct overhead costs, documented direct unavoidable expenses accruing by reason of the suspension, plus 15% of the foregoing damages to cover normal Contractor profit. Contractor shall not be entitled to indirect costs or any other damages arising out of the delay, including but not limited to, interruption of schedules, or any other impact claim or ripple effect. If a delay is caused by Owner and Contractor (joint delay), Contractor shall be entitled to a time extension only, by reason of such joint delay.

**108.07 LIQUIDATED DAMAGES**

- A. 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.
- B. It is therefore agreed that Contractor will pay to Owner, not as a penalty but as liquidated damages, the per diem amount, as set forth in the following given Schedule of Liquidated Damages or modification thereof as given in the Special Provisions for each and every calendar day elapsed in excess of the Contract time or the final adjusted Contract time applicable to the work required under the Contract.

SCHEDULE OF LIQUIDATED DAMAGES

| Original Amount of Contract |                  | Per Diem Amount of Liquidated Damages |             |
|-----------------------------|------------------|---------------------------------------|-------------|
| For More Than               | To and Including | Calendar Day*                         | Working Day |
| \$ 0                        | \$ 25,000        | \$ 40                                 | \$ 55       |
| 25,000                      | 50,000           | 65                                    | 85          |
| 50,000                      | 100,000          | 110                                   | 150         |
| 100,000                     | 500,000          | 150                                   | 210         |
| 500,000                     | 1,000,000        | 225                                   | 315         |
| 1,000,000                   | 2,000,000        | 300                                   | 420         |
| 2,000,000                   | 5,000,000        | 450                                   | 630         |

\*Calendar day amounts are applicable when the contract time is expressed on the calendar day, calendar workday or fixed date basis.

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

- D. 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 which 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.

#### **108.08 CONTRACTOR'S REPRESENTATIVE**

- A. Designate, in writing before starting work, an authorized representative who shall have complete authority to represent and to act for Contractor, in all directions given by the City Engineer. Contractor or its authorized representative shall supervise the work, and shall be present on site continually during its progress.
- B. If Contractor or its authorized representative is not present, directions may be given by the City Engineer or his authorized representative to the workmen and such order shall be received and followed. Any direction will be confirmed in writing upon request from the Contractor.
- C. Contractor shall keep a complete copy of the Plans and Specifications on or near the site at all times.

#### **108.09 CONFLICTS, ERRORS, OMISSIONS, AND ADDITIONAL DRAWINGS**

- A. Check and compare all Plans and Specifications prior to construction and notify the City Engineer of any discrepancies or omissions in order to permit correction by the City Engineer. Coordination of Plans and Specifications is intended.
- B. Furnish labor and materials as required for the work. Should any work or materials be reasonably required or intended for carrying the project to completion which are omitted on the Plans and Specifications, furnish same as fully as if particularly delineated or described. The intent of the Plans and Specifications is to show and describe a complete project within the limits stated.
- C. Dimensions shown on Plans shall be followed, rather than scale measurements. Whenever it appears that the Plans are not sufficiently detailed or explicit, the City Engineer may furnish additional detail drawings or written instructions and Contractor shall perform the work in accordance with the additional details or instructions.

#### **108.10 OWNER'S RIGHT TO DO WORK**

- A. Failure or refusal to comply with any of the terms or conditions of the Contract will permit Owner to supply or correct any deficiency or defect or take other appropriate action without prejudice to any other remedy.
- B. Such action by Owner shall be taken only after seven days notice by the City Engineer to Contractor and his Surety, unless in the judgment of the City Engineer an emergency or danger to the work or to the public exists, in which event action of Owner as set forth above may be taken without any notice whatsoever.
- C. The cost of such action by Owner shall be deducted from the payment then or thereafter due Contractor. Pay Owner any costs in excess of such payment due.

#### **108.11 TERMINATION FOR DEFAULT**

- A. If the Contractor should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of insolvency, or if he should refuse to or fail to supply enough properly skilled workmen or proper materials for the efficient prosecution of the Project, disregard laws, ordinances or the instructions of the City Engineer, or otherwise be in violation of any provision of the Contract, the Owner may, without prejudice to any other right or remedy and after giving the Contractor and its Surety seven days written notice, terminate the services of the Contractor and take possession of the premises and of all materials, tools and appliances thereon as well as all other materials

whether on the premises or not, on which the Contractor has received partial payment and finish the work by whatever method it may deem expedient.

- B. In the event action as above indicated is taken by the Owner, the Contractor, or its Surety, shall provide the City Engineer with immediate and peaceful possession of all of the materials, tools and appliances located on the premises as well as all other materials whether on the premises or not, on which the Contractor has received any progress payment.
- C. Upon termination, in the event that the Surety does not complete the Contract, at the election of the Owner, Contractor shall assign any and all subcontractors and material contracts to Owner or Owner's designee. Further, the Contractor shall not be entitled to receive any further payment until the work is completed. On completion of the work, determination shall be made by the City Engineer of the total amount the Contractor would have been entitled to receive for the work, under the terms of the Contract, had Contractor completed the work. If the difference between said total amount and the sum of all amounts previously paid to the Contractor, which difference will hereinafter be called the "unpaid balance," exceeds the expense incurred by the Owner in completing the work, including expense for additional managerial and administrative services, such excess will be paid to the Contractor, with the consent of the Surety. If, instead, the expense incurred by the Owner exceeds the unpaid balance, the amount of the excess shall be paid to the Owner by the Contractor or his Surety. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be as determined and certified by the City Engineer.
- D. In addition to and apart from the above-mentioned right of the Owner to terminate the employment of the Contractor, the Contract may be canceled at the election of the Owner for any willful failure or refusal on the part of the Contractor to faithfully perform the Contract according to all of its terms and conditions; provided, however, that in the event the Owner should cancel the Contract, neither the Contractor nor its Surety shall be relieved from damages or losses suffered by the Owner on account of the Contractor's breach of Contract.
- E. The Owner may, at its discretion, avail itself of any or all of the above rights or remedies and that its invoking of any one of the above rights or remedies will not prejudice or preclude the Owner from subsequently invoking any other right or remedy set forth above or elsewhere in the Contract.
- F. None of the foregoing provisions shall be construed to require Owner to complete the work, not to waive or in any way limit or modify the provisions of the Contract relating to the fixed and liquidated damages suffered by Owner on account of failure to complete the Project within the time prescribed.

### **108.12 TERMINATION IN THE PUBLIC INTEREST**

- A. It is hereby agreed that the Owner has the right to terminate the Contract in whole or in part when it is considered to be in the public interest.
- B. In the event the Contract is terminated as being in the public interest the Contractor shall be entitled to a reasonable amount of compensation for preparatory work and for all costs and expenses arising out of the termination excluding lost profits. The amount to be paid to the Contractor:
  - 1. Shall be determined on the basis of the contract price in the case of any fully completed separate item or portion of the work for which there is a separate or unit contract price; and
  - 2. In respect to any other work, the Contractor will be paid a percent of the Contract price equal to the percentage of the work completed.