

CHAPTER 1

GENERAL REQUIREMENTS

STANDARD CONSTRUCTION SPECIFICATIONS

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STANDARD CONSTRUCTION SPECIFICATIONS

1 - GENERAL REQUIREMENTS

101 - Composition of Standard Construction Specifications

- Definitions - Abbreviations
- Equal Employment Opportunity Policy
- Americans with Disabilities Act

101.01.00 General

101.01.01 Applicability of Parts

Part 1 contains General Requirements and definitions and abbreviations contained throughout these Specifications. In addition, it provides for one of the processes by which the City contracts with the private sector, for the construction of capital improvements.

Part 2 contains the General Technical Requirements for all capital improvements which are to be operated and maintained by the City.

Part 3 contains specific requirements for the construction of streets which are to be operated and maintained by the City.

Part 4 contains specific requirements for the construction of storm sewers and drains.

Part 5 contains specific requirements for the construction of water pipe lines which are to be operated and maintained by the City.

Part 6 contains specific requirements for the construction of various kinds of installations and structures which are to be operated and maintained by the City.

Except as otherwise provided, projects conducted by City crews shall be required to comply with these Specifications.

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

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 Engineer.

Command type sentences are used throughout these Standard Specifications. In all cases the command "expressed" or "implied" is directed to the Contractor.

The Specifications contained herein are divided into three categories:

(1) Chapter, (2) Section, and (3) Subsections, and are designated as in the following example:

(1) Chapter:

STANDARD CONSTRUCTION SPECIFICATIONS

2 - GENERAL TECHNICAL REQUIREMENTS

(2) Section:

204 - Excavation, Embankment, Bedding, and Backfill

(3) Subsections:

204.01.00 Description

204.01.03 Classified Excavation

204.01.03A - Rock Excavation

101.01.02 Definitions

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

ACCEPTANCE OF WORK - All work required by the contract documents will be considered accepted upon the issuance of the letter of acceptance by the City.

ACCEPTANCE TESTING - Tests on in-place materials and products in their finished state to determine acceptability for payment.

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.

ADDENDUM - A modification to the bid document issued by the City prior to the opening of the proposal.

ADJUSTED CONTRACT TIME - The contract time which has been changed for cause during the progress of the work.

APPROVED EQUAL - A product, component or process whose use in or on a particular project is specified as a standard for comparison purposes only. The "equal" product, component or process shall be the same or better than that named in function, performance, reliability, quality and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer, pursuant to **Subsection 106.08**.

ATTORNEY - The Attorney designated by the City of Keizer to represent the City.

AWARD OF CONTRACT - Written notification to the bidder that the bidder's proposal has been accepted by the City and the bidder has been awarded the project subject to the execution of the contract.

BID BOND - The bond required to be submitted with each proposal as described in **Subsection 102.08** as a Proposal Guaranty, which assures that the bidder will enter into a contract if his/her proposal is accepted.

BID SCHEDULE - The list of bid items, units of measurement, quantities, and prices included with the proposal or contract.

BIDDER - Any individual, firm, co-partnership, corporation, or combination thereof, submitting a proposal in response to the public announcement calling for bids on the work contemplated in the contract documents.

CALENDAR DAY - Any day shown on the calendar beginning and ending at midnight.

CHANGE ORDER - A written order, issued by the Engineer to the Contractor, approved by the City, covering changes in either the plans, specifications, or quantities within the scope of the contract.

CITY - City of Keizer, Oregon.

CLOSE CONFORMANCE - Where working tolerances are not given on the plans or in the specifications, close conformance means compliance, in the Engineer's judgment, with reasonable and customary manufacturing and construction tolerances. Where working tolerances are given, close conformance means compliance with those tolerances.

CONTRACT - The agreement between the City and the Contractor describing the work to be done and defining the obligations of the City and the Contractor. The contents of a contract may include but not be limited to standard specifications, special provisions, standard drawings, plans, proposals, method of payment, and performance and payment bond.

CONTRACT DOCUMENTS - The contract, authorizing ordinance, the advertisement calling for bids, the proposal, plans, shop drawings, all specifications, addenda, permits, performance bond, insurance certificate, and change orders for any approved revisions made during the performance of the work to any of the above-listed documents.

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

CONTRACT PRICE - The total amount of money for which the contract is awarded.

CONTRACT TIME - The amount of time allowed to perform the work under the contract.

CONTRACTOR - Any individual or legal entity which has entered into a contract with the City.

DAY - Calendar day, any and every day shown on the calendar, Sundays and holidays included.

DEPARTMENT OF PUBLIC WORKS - The Department of Public Works of the City of Keizer, Oregon, acting directly or through properly authorized officials, employees, and agents limited to the particular duties entrusted to them.

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

EASEMENT - The right to use a defined area of property for a specific purpose or purposes as set forth in a document which has been made a part of the contract documents.

- ENGINEER** - The individual who represents the City and who is designated by the contracting agency to administer the contract.
- EQUIPMENT** - All machinery, tools, and apparatus necessary for the completion of the contract.
- ESTABLISHMENT PERIOD** - The period of time specified to assure satisfactory establishment and growth of planted material.
- EXTRA WORK** - Work not provided for in the contract but determined by the Engineer as essential to the completion of the contract. Extra work may be paid for as a price agreement, force account, or change order.
- IMPROVEMENT** - A term encompassing all phases of the work to be performed under the contract, synonymous with the term "Project".
- INCIDENTAL WORK** - Work necessary for fulfillment of the contract but which is not listed as a pay item in the contract and for which no separate payment will be made.
- INSPECTOR** - The authorized representative of the Engineer assigned to inspect and report on contract performance and work.
- LEGAL HOLIDAY** - The following days are legal holidays:
New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. When any of the previously stated legal holidays fall on a Sunday, the following Monday is the legal holiday. When any of the previously stated legal holidays fall on a Saturday, the preceding Friday is the legal holiday. Sunday shall also be a legal holiday.
- LETTER OF ACCEPTANCE** - A letter of final acceptance of the authorized work performed in accordance with the contract.
- LIQUIDATED DAMAGES** - A fixed sum agreed upon, at the outset of a contractual arrangement, as the proper compensation to be paid to the injured party in the event of breach.
- 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.

MATERIAL - Any substances specified for use in the construction of the project.

MAINTENANCE BOND - A bond, provided by a licensed surety authorized to operate in the State of Oregon, providing for a one year warranty of the workmanship and materials performed under the permit or contract. The amount of bond to be determined by the City.

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 (2) or more persons, firms, or corporations, notice to one shall be deemed notice to all.

NOTICE OF AWARD - A notice, in writing, to the Bidder chosen to do the work.

NOTICE TO CONTRACTORS - Written public announcement or advertisement inviting proposals for work to be performed.

NOTICE TO PROCEED - A notice, in writing, from the Engineer or City to the Contractor designating the date the contract time is to begin.

ODOT STANDARD SPECIFICATIONS - The latest edition of the specification document published by the State of Oregon entitled Standard Specifications for Highway Construction, including supplements and standard drawings, available from the Oregon Department of Transportation, State Highway Division, Salem, Oregon.

Oregon O.S.H.A. - Oregon Occupational Safety and Health Administration.

PAVEMENT - Asphaltic concrete or Portland Cement concrete placed for vehicular use on highway, road, and street travel ways; shoulders, auxiliary lanes, and parking areas.

PERFORMANCE AND PAYMENT BOND - The bond submitted by the Contractor and his/her Surety as specified in the contract and as more fully described in **Subsection 103.03**.

PLANS - The official plans, profiles, cross sections, elevations, details, and other working, supplementary, and detail drawings, or reproductions thereof, signed by the Engineer, which show the location, character, dimensions, and details of the work to be performed. Plans may either be bound in the same book as the balance of the contract documents or bound in separate

sets, and are a part of the contract documents, regardless of the method of binding.

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

PROCESS CONTROL TESTING - Tests of materials and products during their fabrication and construction to insure the materials and products comply with the specifications.

PROJECT - General term encompassing all phases of the work to be performed under the contract and is synonymous to the term "Improvement".

PROPOSAL - The written offer of a Bidder which is the basis of the contract, submitted on the City's official proposal form, to perform stated work at prices quoted.

PROPOSAL GUARANTY - The security furnished with a proposal to assure that the bidder will enter into the contract if the proposal is accepted by the City.

RAILROAD - The word railroad applies to railroad or railway companies, their tenants, licensees, and utility companies which jointly own or use facilities with a railroad or railway company.

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, unless specifically referred to by edition, volume, or date.

RENTAL RATE BLUE BOOK - Rental Rate Blue Book for Construction Equipment, latest edition, published by Dataquest Inc., 1290 Ridder Park Drive, San Jose, CA 95131, Phone (800) 227-8444.

RIGHT OF WAY - A general term denoting land or 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 - Supplementary plans or data which the contract requires the Contractor to submit to the Engineer, including but not limited to; steel bending details, erection plans, cofferdam plans, and catalog data explaining equipment proposed for use.

SHOWN - As used herein, the work "shown", or "as shown", shall be understood to refer to work shown on the plans in the contract documents.

SPECIAL SPECIFICATIONS - Requirements peculiar to the project and changes and modifications of the Standard Specifications.

SPECIFIED - As used herein, the work "specified", or "as specified", means as by the contract documents.

STANDARD PLANS OR DRAWINGS - Details of structures, devices, or instructions adopted by the City as a standard and referred to in the contract documents.

STANDARD SPECIFICATIONS - the terms, directions, provisions, and requirements set forth herein.

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 other legal entity entering into a contract with the Contractor to perform a portion of the work, with the written consent of the City.

SUPERINTENDENT - The superintendent is the person at the construction site in charge of the project, for the Contractor or Subcontractor at any given time. The term "superintendent" does not refer to skill or wage level.

SUPPLEMENTAL AGREEMENT - A written agreement between the Contractor and the City to supplement, clarify or alter the plans, specifications or contract, or to provide for unforeseen work, alterations in plans or other circumstances not anticipated by or provided for in the plans and specifications.

SURETY - The corporate body which is bound with and for the Contractor for the acceptable performance of the work and the payment of all obligations of the contract. When applied to the proposal guaranty, "Surety" refers to the

corporate body which engages to be responsible for the Bidder's execution of a satisfactory contract when and if the bid is accepted by the City.

TRAFFIC LANE - That portion of the traveled way marked for the movement of a single line of vehicles.

UNIT PRICE - A contract item of work providing for payment based on a specific unit of measurement.

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.

WARRANTY PERIOD - The Contractor guarantees that the workmanship and material of the job by the Contractor and his/her Subcontractors will prove satisfactory for a stated period of time. During this period any defects will be corrected or a settlement will be made satisfactory to the City.

WORK - All materials, 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.

WORK DAY - Every calendar day excluding Saturdays and legal holidays.

WORKING DRAWINGS - Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which the Contractor is required to submit to the Engineer.

101.01.03 Abbreviations

AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGA	American Gas Association
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APA	American Plywood Association
APWA	American Public Works Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
AWG	American Wire Gage
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
DEQ	Oregon Department of Environmental Quality
EPA	United States Environmental Protection Agency
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
IME	Institute of Makers of Explosives
ITE	Institute of Transportation Engineers
MUTCD	Manual on Uniform Traffic Control Devices For Streets and Highways (as adopted and supplemented by Oregon)
NEC	National Electrical Code (as adopted by Oregon)
NEMA	National Electrical Manufacturer's Association
NLMA	National Lumber Manufacturer's Association
ODOT	Oregon Department of Transportation
ORS	Oregon Revised Statutes
OSHA	Occupational Safety and Health Administration
PCA	Portland Cement Association
PCI	Prestressed Concrete Institute
PUC	Public Utility Commission
UBC	Uniform Building Code (as adopted by Oregon)
UL	Underwriter's Laboratories, Inc.
UPC	Uniform Plumbing Code (as adopted by Oregon)
USASI	United States of America Standards Institute
WWPA	Western Wood Products Association

101.01.04 Equal Employment Opportunity Policy

It is the policy of the City of Keizer to promote equal opportunity to all persons in matters affecting (but not limited to) recruitment, employment, compensation, benefits, promotions, training, discipline, transfer, and layoff practices without regard to a person's race, color, religion, national origin, disability, sex, or age except where there are bona fide occupational qualifications. This policy extends to all Contractors receiving public money for the fulfillment of public contracts with the City of Keizer. Violation of any applicable Equal Employment Opportunity laws by Contractors will be grounds for immediate termination of this Contract without recourse by the Contractor.

101.01.05 Americans with Disabilities Act

Upon request, auxiliary aids and/or special services will be provided to participants with disabilities. To request services, please contact the City at 390-3700 at least two working days (48 hours) in advance.

102 - Proposal Requirements

102.01.00 Prequalification of Bidders

The City may require prequalification of Bidders in accordance with ORS 279.

102.02.00 Contents of Proposal Form

The proposal form for bidding purposes will be furnished to prospective Bidders. The proposal form may include, but not be limited to, the location and description of the work, and the time, date, and place of opening and reading the proposals. The proposal form will show the approximate quantities of work to be performed and materials to be furnished and will state the time in which the work is to be completed. The form will identify supplemental standard specifications, special provisions, and other documents which will govern the work.

All papers bound with or attached to the proposal form are considered a part of the proposal and must not be altered in an unauthorized manner when the proposal is delivered.

The plans, specifications, and other documents designated in the proposal form will be considered a part of the proposal whether attached or not.

102.03.00 Interpretation of Quantities in Bid Schedule

The quantities appearing in the bid schedule are approximate and are prepared for the comparison of bids. The City does not represent or warrant that the individual items or total quantities of the actual work will correspond. Payment to the Contractor will be made only for the actual quantities of work performed and accepted or materials furnished in accordance with the contract. The scheduled quantities of work to be done and materials to be furnished may be increased, decreased or omitted as provided in **Section 104**.

102.04.00 Examination of Proposal Documents and the Work Site

The Bidder is expected to examine the site of the proposed work and the proposal form before submitting a proposal. The submission of a bid shall be considered prima facie evidence that the Bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the proposal documents.

The City will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to be fully informed regarding all conditions pertaining to the work.

Where the City has conducted subsurface explorations, records of these investigations will be made known and available for the Bidder's inspection and evaluation at the offices of the City. Upon request, the Bidder may obtain a copy of these records.

While subsurface investigations may have been performed with reasonable care, there is no warranty or guaranty, either expressed or implied, that the subsurface investigation will disclose the actual conditions which will be encountered during the progress of the work. The sole purpose of these investigations is to furnish planning and design information for the project. When such data is shown in the plans as foundation data, the data shall not constitute a part of the contract.

102.05.00 Explanation or Interpretation of Proposal Documents

Any explanation desired by a Bidder regarding the meaning or interpretation of proposal documents shall be requested in writing ten work days before the scheduled closing time for filing bids. Oral explanations or instructions given before receiving bids on the project will not be binding. Any interpretation made will be in the form of an addendum to the specifications or drawings and will be furnished to all Bidders. Bidders shall acknowledge addenda in their proposals.

102.06.00 Changes in Proposal Documents Prior to Opening Bids

The City reserves the right, at any time prior to the time of opening proposals, to make changes or corrections in proposal documents. Bidders will be notified of such changes or corrections by letter or telegram sent to the Bidder's address as it appears in the files of the City, or an announcement of such changes or corrections will be made immediately prior to the opening of proposals. When such changes are made, Bidders will be allowed to withdraw their proposals or to modify the proposals to account for the changes.

The City will not be responsible for failure of Bidders to receive notifications sent out as above stated or for failure of Bidders to withdraw their proposals after announcement of changes or corrections in proposal documents. All proposals opened will be understood to be based upon the changed or corrected proposal documents. Proposals will be subject to corrections as to changed quantities, extensions, and amounts for comparison of bids.

102.07.00 Preparation of Proposals

The Bidder shall submit the proposal upon the forms furnished by the City. The filling in of the blank spaces shall be done in accordance with the apparent intent. The Bidder shall specify a unit price, in figures, for each pay item for which a quantity is given and shall show the products, in figures, of the respective unit prices and quantities in the column provided for that purpose and the total amount of the proposal obtained by adding the amounts of the several items. When an item in the proposal contains a choice to be made by the Bidder, the Bidder shall indicate a choice. All figures shall be in ink or typed. Erasures, changes, and corrections shall be initialed by the Bidder.

The Bidders's proposal must be signed in ink by the Bidder or by an agent of the Bidder. The Contractor shall include the name and address of all parties and persons who have an interest in the bid. The Contractor shall sign all other statements which may be required in the proposal form.

102.08.00 Proposal Guaranty

Each proposal shall be accompanied by a cashier's check, a certified check, or a proposal bond, payable to the City in the amount specified in the proposal documents.

If the successful Bidder fails to execute the contract and deliver the executed contract with the performance and payment bond to the City within ten work days from the date on which the Notice of Award is sent to the Bidder, the cashier's check, certified check, or proposal guarantee may be forfeited to the City.

102.09.00 Delivery of Proposals

Each proposal must be presented or delivered under sealed cover to the City at the specified place prior to the time scheduled for opening and reading of proposals. The proposal should be identified by a notation, on the outside of the cover, identifying it as a proposal and the name of the project. Proposals presented or delivered after the scheduled time will not be opened or considered.

102.10.00 Withdrawal or Modification of Proposals

Upon written request of the Bidder, a proposal may be withdrawn prior to the time scheduled for opening and reading of proposals. Negligence on the part of the Bidder in preparing the proposal confers no right to withdraw the proposal after said scheduled time.

Change in a delivered proposal will be permitted only if a request for making such modification is submitted in writing, signed by the Bidder, and the specific modification is received prior to the time scheduled for the opening of proposals.

102.11.00 Opening and Comparison of Proposals

Proposals will be opened and read publicly at the time and place indicated in the advertisement.

The proposals for each project will be compared on the basis of total cost. Adjustments shall be made for alternate items and for any specified or authorized reductions, additions, or changes. In case of conflict between a unit price and the corresponding extended amount, the unit price shall govern.

The results of the comparisons and considerations will be made available to the public within a reasonable time after opening of the proposals.

102.12.00 Consideration of Proposals

The City reserves the right to reject any or all proposals and waive irregularities not affecting substantial rights in accordance with ORS 279.

Proposals will be considered irregular and may be rejected for any of the following reasons:

- a) If the proposal is not submitted on the standard proposal form or is not completed;
- b) If the proposal contains or is accompanied by conditions, offers, reservations, or statements concerning limitations, qualifications, contingencies, combination of bids, alternate bids, or deductions other than authorized;
- c) If the proposal contains any unauthorized alteration;
- d) If the proposal contains any erasure or correction of a Bidder's entry which is not initialed by the Bidder;
- e) If the proposal is not in conformity with law; or
- f) If the proposal is not accompanied by a proposal guaranty.

102.13.00 Return of Proposal Guaranties

All proposal guaranties, except those of the two low Bidders, will be released within ten work days after the date of proposal opening. The proposal guaranties of the two low Bidders will be released within ten work days after the contract has been entered into and signed by the City.

103 - Award and Execution of Contract

103.01.00 Contents of Contract

The contents of the contract may include, but not be limited to, the standard specifications and drawings, special provisions, plans, a bid schedule, the method of payment, the signed proposal, the performance and payment bond, and the executed agreement.

103.02.00 Award of Contract

The award will be made by the City to the Bidder submitting the acceptable proposal with the lowest total bid. In determining the lowest acceptable bid, the City may take into account, among other factors:

- a) the prices bid including discounts;
- b) the time of completion or delivery proposed between equal bids;
- c) the relative merits and performance of any item specifically proposed by the Bidder;
- d) any variation in maintenance and warranty period specifically proposed by the Bidder in excess of minimums specified;
- e) the realistic balance of prices in the proposals for various units of work; and,
- f) the experience and ability of the Bidder to perform the work.

The City reserves the right to waive informalities or irregularities in the proposals. Determination of the lowest acceptable Bidder and award may be subject to review and determination by the City as to the legal sufficiency of any proposal submitted.

The award of contract, or the rejection of all bids, will be made by the City within 45 calendar days after the date of opening of the proposals.

103.03.00 Performance and Payment Bond

The performance and payment bond to be furnished by the successful Bidder shall be the bond of a surety company authorized to transact business in the State of

Oregon. The bond must be acceptable to the City. The amount of the performance and payment bond shall be the same as the amount of the contract.

The performance and payment bond must be signed by the surety company's Attorney-in-Fact. The Surety's seal must also be affixed to the performance and payment bond. Power of Attorney for the Attorney-in-Fact must be attached to the bond.

103.04.00 Execution of the Contract

The Bidder to whom the contract is awarded shall, within ten work days from the date of receipt, deliver to the City the fully executed contract along with required insurance certificates and performance and payment bonds. The City will execute the contract within ten work days and forward a copy to the Contractor.

103.05.00 Failure to Execute Contract

Failure on the part of the Bidder to execute the contract in accordance with Subsection 103.04.00 will be just cause for cancellation of the award and forfeiture of the proposal guaranty. The forfeited proposal guaranty shall become the property of the City as liquidation of damages sustained by the breach of contract by the Bidder. The City may then award the contract to the next lowest acceptable Bidder, re-advertise the work, or take such other course the City deems expedient.

103.06.00 Notice to Proceed

After the contract has been executed and the performance and payment bond and all required insurance certificates have been received and approved by the City, the Engineer will issue a written notice to proceed.

104 - Scope of Work

104.01.00 Intent of Contract

The intent of the contract is to provide for the construction and completion of the work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation, supplies, and incidentals required to complete the work in accordance with the contract.

The Contractor shall perform all work in accordance with the lines, grades, typical cross sections, dimensions and other data shown on the plans or as modified by written orders from the Engineer, and all other work determined by the Engineer as necessary for the proper prosecution and completion of the work.

104.02.00 Plans and Specifications

The standard specifications, supplemental specifications, plans, special provisions, and all supplementary documents are essential to the contract. A requirement occurring in one is as binding as though occurring in all. All are intended to be complementary and to describe and provide for the complete work.

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

- 1) Contract
- 2) Proposal
- 3) Permits from outside agencies required by law
- 4) Special Specifications (Provisions)
- 5) Plans
- 6) Standard Plans
- 7) Standard Specifications
- 8) Reference Specifications

Dimensions written on the plans shall govern over scaled dimensions.

The intent of the plans and specifications is to prescribe the details for the construction of the work which the Contractor is to perform. Where the specifications or plans describe portions of the work in general terms, but not in complete detail, the best general practice is to prevail and only materials and workmanship of the first quality may be used.

If a conflict, error, omission, or lack of detailed description is discovered in the contract documents, the Contractor shall immediately notify the Engineer and request clarification. The Engineer will resolve the conflict and make any corrections and interpretations necessary to fulfill the intent of the plans and specifications.

104.03.00 Working Drawings

The Contractor will supplement the City's prepared plans with working drawings as necessary and as specified. When working drawings or other drawings are required, the drawings shall be prepared in accordance with current modern engineering practice. Drawings shall be of a size and scale that will clearly show all necessary details and shall be transmitted to the Engineer for review before commencing the work. A minimum of five copies shall be furnished. Materials shall not be furnished or fabricated nor any work done before the drawings are approved.

The Engineer will review the working drawings and note any comments on the drawings. Working drawings submitted as specified will be processed and returned within 21 calendar days of receipt by the Engineer. If the drawings are not returned within 21 calendar days, the Engineer may grant an extension of the contract time equal to any delay in work caused by the excess review time.

The Engineer's review will not relieve the Contractor of any responsibilities under the contract. The Contractor shall be responsible for correcting errors or omissions in the drawings and deviations from the specified work unless such errors, omissions, or deviations were specifically called to the attention of, and approved by, the Engineer. The Contractor is responsible for the correctness of the drawings, shop fits, and field connections, and the results obtained by use of such drawings.

104.04.00 Changes in Work

The City may change the plans, specifications, character of the work, or quantity of work, provided the total value of all such changes, both additive and deductive, does not exceed the following:

- a) an increase or decrease of more than 25 percent of the total cost of the work calculated from the original proposal quantities and the unit contract prices; or,
- b) an increase or decrease of more than 25 percent in the quantity of any one major contract item.

For condition b) above, a major item is defined as any item that amounts to 10 percent or more of the total contract price. If it is necessary to exceed this limitation, the change shall be by written supplemental agreement between the Contractor and the City.

Any change shall be in writing and state the dollar value, method of payment, and any adjustments in contract time, and shall provide for the signatures of the Contractor and the City.

Changes in the plans and specifications, requested in writing by the Contractor, which do not materially affect the work, may be granted by the Engineer. Payment will be made in accordance with **Section 109**.

104.05.00 Changed Conditions

The Contractor shall promptly notify the Engineer in writing, before the conditions are disturbed, of changed work site conditions. Changed conditions are as follows:

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

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

104.06.00 Disputed Work

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

- a) immediately give oral notice to the Engineer,

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

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

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

104.07.00 Extra Work

Upon the written order of the Engineer, the Contractor shall perform extra work. If extra work is of a kind for which specifications are given in the contract, the extra work shall be performed in accordance with the contract. If extra work is of a kind not covered by the contract, the extra work shall be performed as ordered by the Engineer in writing.

Payment for extra work will be as set forth in **Section 109**.

105 - Control of Work

105.01.00 Authority of the Engineer

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

- a) quality and acceptability of materials and work;
- b) classification and measurement of unit price work;
- c) acceptability of rates of progress on the work;
- d) interpretation of plans and specifications;
- e) fulfillment of the contract by the Contractor; and,
- f) payments under the contract.

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

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

105.02.00 Authority of Inspectors

Inspectors have the authority to:

- a) inspect all work done and materials furnished including preparation, fabrication, or manufacture of materials to be used;
- b) report to the Engineer about the progress of the work and the manner in which it is performed;
- c) report to the Engineer and notify the Contractor when materials furnished or work performed by the Contractor fail to meet the requirements of the plans and specifications;

- d) orally reject defective work;
- e) temporarily suspend work being done improperly until the Engineer can render a decision; and,
- f) additional authority that may be delegated by the Engineer or the City.

Inspectors are not authorized to:

- a) accept work; or,
- b) alter or waive the provisions of the contract.

105.03.00 Inspection

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

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

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

105.04.00 Responsibilities of the Contractor

The Contractor shall be responsible for any process control sampling, testing, measurement, and inspection needed to insure that the finished work complies with Specifications.

The Contractor shall give the attention necessary to keep the work progressing at a rate satisfactory to the Engineer. The Contractor shall provide, at all times, a competent Superintendent for all work on the project. The Superintendent shall be readily accessible on a daily basis, have a set of plans, specifications, special provisions, and addenda, and be experienced in the type of work being performed. The Superintendent shall have the authority to receive and carry out, without delay, the Engineer's instructions and orders and to make arrangements for necessary materials, equipment, and labor.

The Contractor shall allow the Engineer access at all times, during normal office hours, to books and records of the Contractor and the Contractor's Subcontractors which pertain to the contract, and furnish the Engineer facts necessary to determine actual cost of any part of all of the work. The Engineer will consider a request for confidentiality to protect trade secrets.

If the Engineer is not provided proper facilities by the Contractor for keeping strict accounting of costs, then the Contractor agrees to waive any claim for extra compensation.

105.05.00 Correspondence

The Engineer's written correspondence to the Contractor shall be delivered to the Contractor or the Contractor's Representative by personal delivery or by mailing or delivering to the address given in the contract.

The Contractor's written correspondence to the Engineer shall be delivered to the Engineer or the Engineer's Representative by personal delivery or by mailing or delivering to the office of the Engineer.

When available, electronic mail services may be used.

105.06.00 Notifications Relative to Contractor's Activities

The Contractor shall obtain prior approval from the Engineer for the closing or partial closing of any road, street, alley or other public thoroughfare. The Contractor shall give two work days' advance notice of such closure to all affected agencies and individuals including, but not limited to, the sheriff, police,

fire, ambulance, public or private transportation services, public or private school systems, solid waste services, postal and parcel delivery services, and affected businesses and residents.

The Contractor shall notify all utilities at least one week prior to starting work, through the Salem-Keizer Utility Notification System (1-800-332-2344), to give the utilities reasonable opportunity to mark the location of their facilities.

The Contractor shall notify all agencies affected by the operations so as to coordinate the work with other agencies.

Notification shall include, but not be limited to, the time of commencement and completion of the work, the names of streets or location of alleys to be closed, the schedule of operations, and routes of detours where possible. The Engineer shall have the right to review such notices.

The Contractor shall be responsible for renotifying the affected agencies when the schedule of work is changed. Damages or claims resulting from improper or insufficient notification to the affected agencies shall be the responsibility of the Contractor.

105.07.00 Utilities and Existing Improvements

105.07.01 General

Information shown on the plans as to the location of existing water courses and utilities has been compiled from available sources and may not be accurate. The Contractor shall determine the location and nature of affected water courses, utilities or underground structures prior to commencing the work.

The Contractor shall provide for the flow of water courses and other essential utilities that may be interrupted during the progress of the work and shall restore such water courses or utilities after completion of the work.

The adjustment of utilities or the altering or shifting of existing utility lines, facilities, or systems in any manner may be temporary or permanent. This includes but is not limited to improvement, connection, disconnection, relocation, or removal.

Existing utilities requiring adjustment may be adjusted by the utility owner before, during, or after project construction. The plans will not normally show the new location of utilities that have been or will be adjusted.

105.07.02 City's Responsibilities

Before proposals are received, the City will make preliminary arrangements for planned adjustment of utilities.

105.07.03 Contractor's Responsibilities

After the contract is awarded, the Contractor shall contact utility owners and verify all utility involvement within the work.

The Contractor will coordinate project construction with the adjustment of utilities, take all necessary precautions to prevent disturbing the utilities, and perform work so that utility owners and users are caused a minimum of inconvenience.

The Contractor shall protect from damage or disturbance any utility which is to remain within the right of way. When an existing utility requires adjustment, the Contractor shall protect it from damage or disturbance and promptly notify the Engineer.

The Contractor shall report to the Engineer any utility owner who fails to cooperate or fails to follow the planned utility adjustment.

To ease or streamline the work, the Contractor may desire to adjust the utilities by asking the utility owners to move, remove, or alter their equipment in ways other than those shown on the plans or in the contract documents. The Contractor shall conduct the negotiations, make the arrangements, and pay all costs that arise from such changes.

105.08.00 Cooperation Between Contractors

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

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

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

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

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

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

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

105.09.00 Construction Stakes, Lines, and Grades

105.09.01 General

No work shall be done until the Engineer establishes field controls. Work performed without field controls will be subject to removal.

105.09.02 City's Responsibilities

The Engineer shall:

- a) lay out and set construction stakes and marks needed to establish the lines, grades, slopes, cross sections, and curve super elevations for road work;
- b) provide one set of control stakes for line and grade for each additional phase of work; and,
- c) deduct from payments due or to become due to the Contractor all costs to replace stakes and marks carelessly or willfully damaged or destroyed by the Contractor's operation.

105.09.03 Contractor's Responsibilities

The Contractor shall:

- a) keep the Engineer informed of staking requirements to provide the Engineer with enough time to set stakes, requests for stakes shall be made at least three work days before stakes are required;
- b) coordinate construction activity so as to provide an area for the Engineer to perform surveying work efficiently and safely;
- c) take full responsibility for detailed dimensions, elevations, and slopes measured from Engineer's stakes and marks;
- d) perform the work in a manner to preserve stakes and marks; and,
- e) set any reference lines for automatic control from the control stakes provided.

105.10.00 Protection of Permanent Survey Markers

The Contractor shall notify the Engineer not less than seven work days prior to starting work so that the Engineer may take necessary measures to insure the preservation of survey monuments, property corners, stakes, and bench marks. The Contractor shall not disturb permanent survey monuments, stakes, or bench marks without the consent of the Engineer, and shall notify the Engineer and bear the expense of replacing any that are disturbed without permission. Replacement shall be done by a registered land surveyor.

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

105.11.00 Protection of Property

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

The Contractor shall restore any public or private improvement, facility, or structure located within the right of way that is damaged in the execution of the work. Lawns shall be reseeded after replacement of topsoil and covered with suitable mulch except as noted otherwise. The Contractor shall restore such

facilities to as good or better condition than that existing before the damage occurred, or made a suitable settlement with the owner of the damaged property.

The Contractor shall give at least ten work days' notice to occupants of buildings on property adjacent to the work to permit the occupants to remove vehicles, trailers, other possessions, and salvage or relocate plants, trees, fences, sprinkler systems, or other improvements designated for removal or that might be destroyed or damaged by work operations. Mailboxes removed during the course of construction shall be relocated as specified or directed by the Engineer and in accordance with Postal Service requirements. Signs which must be removed in the course of construction shall be relocated or stored as directed by the Engineer. Signs damaged or lost as a result of carelessness on the part of the Contractor shall be replaced by the Contractor at no expense to the City.

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

The Contractor shall review with the 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, disposal, and burning, and particularly in conformity with the provisions of ORS 477.

105.12.00 Preservation of Historic Objects

If historic objects of archeological or paleontological nature, including ruins, sites, buildings, artifacts, fossils, and other objects of antiquity are encountered within the area in which the Contractor's operations are performed, the Contractor shall postpone operations in the area, preserve the objects from disturbance or damage, and notify the Engineer of their existence and location.

Upon receipt of notification, the Engineer will arrange for the disposition of the objects or for the recording of relative data, and will notify the Contractor when it is appropriate to proceed with the work in the affected area. If the Contractor is directed by the Engineer to perform any work in salvaging historic objects, the work will be paid as extra work.

105.13.00 Temporary Traffic Control

Temporary traffic control shall conform to **Section 202**.

105.14.00 Protection of Work

The Contractor shall protect and maintain the work during construction and until the final inspection has been completed. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces so the work is kept in satisfactory condition at all times.

When the contract is for the placing of a course upon a grade or subgrade previously constructed, the Contractor shall protect and maintain the previous grade or subgrade during the work.

The cost of maintenance work during construction shall be considered incidental work.

If the Contractor fails to protect or maintain the work, the Engineer will immediately notify the Contractor. If the Contractor fails to correct the deficiency within 24 hours after receipt of such notice, the Engineer may correct the deficiency. The cost of this maintenance shall be borne by the Contractor and may be deducted from payments due or to become due to the Contractor.

If the Contractor delays in completing shoulders, drainage structures, or other features of the work, the Engineer may order all or a portion of the project opened to traffic. In such event, the Contractor will not be relieved of the liability and responsibility, including maintenance and traffic control, during the period the work is opened to traffic prior to final acceptance. The Contractor shall conduct the remainder of the work in a manner that will cause the least obstruction to traffic and shall bear any additional expense attributable to the presence of traffic.

105.15.00 Maintenance of Work After Acceptance

At the request of the Contractor and with the approval of the Engineer, the Contractor will be relieved of the duty of maintaining and protecting certain portions of the work that are approved to be placed in service and which have been completed in accordance with the contract.

Such approval by the Engineer will relieve the Contractor of responsibility for injury or damage to completed portions of the work resulting from use by the public or from the action of the elements or from any other cause, excepting injury or damage resulting from the Contractor's operations or negligence. The Contractor will not be required to clean up such portions of the improvement prior to field acceptance, excepting for such items of work as result from the Contractor's operations.

Nothing in this Section shall be construed as relieving the Contractor from full responsibility for correcting defective work found prior to the end of the warranty period.

If such prior possession or use by the City delays the progress of the work or, otherwise, causes additional expense to the Contractor, an equitable adjustment to the Contract price and/or time of completion will be made by change order. Use or possession by the City does not stop the time of the Contract from running. It does not relieve the Contractor from responsibility for completing the project in accordance with the Contract.

Should contract time expire and liquidated damages become assessable, the cost of that portion of the work which the City has taken possession of shall be deducted from the full contract amount to determine the liquidated damage assessment rate.

The City will require a 40% Maintenance Bond upon completion of work.

105.16.00 Use of Light, Power and Water

The Contractor shall furnish temporary light, power and water complete with connecting piping, wiring, lamps and equipment necessary for the work. The Contractor shall obtain all authorizations and permits and bear all costs in connection with temporary services and facilities. The Contractor shall remove temporary facilities upon completion of work.

105.17.00 Subsurface Conditions

Information that may be available from the Engineer regarding subsurface conditions and groundwater elevations is offered as supplementary information only. Neither the Engineer nor the City assumes any responsibility for the accuracy, completeness, or interpretation of such supplementary information. Determination of the actual subsurface conditions is the responsibility of the Contractor.

Logs of test holes, test pits, soil reports, groundwater levels, and other supplementary subsurface information are offered as available information of underlying material and conditions at the locations actually tested.

- b) work done contrary to the Engineer's instructions; or,
- c) work done without the Engineer's written authorization.

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

105.21.00 Cleanup

As the work progresses and immediately after completion of the work, the Contractor shall clean up and remove all refuse and unused materials of any kind resulting from the work. If the Contractor fails to commence the cleanup within 24 hours after directed by the Engineer, the Engineer may have the work performed by others. The cost shall be borne by the Contractor and may be deducted from payments due or to become due to the Contractor.

After the work is completed and before final acceptance of the work, all areas affected by the work shall be neatly finished and all equipment, temporary structures, rubbish and waste shall be removed from the work area. All work areas shall be brought to a condition equal or better than prior to the commencement of work by the Contractor.

105.22.00 Final Inspection

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

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

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

- a) all work required under the contract;

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

105.23.00 Final Acceptance

See Section 108.

106 - Control of Materials

106.01.00 Preference for Use of Oregon Products

Preference may be given to materials produced or manufactured in Oregon. This provision does not apply to contracts on projects financed wholly or in part by Federal funds.

106.02.00 Quality of Materials

The Contractor shall use only new materials, parts, products, and equipment which conform to the specifications. The Contractor shall determine the kind of work, amount of work, and other factors that may be necessary or involved in furnishing the products and materials. Materials and products that are unsuitable for the work will be rejected by the Engineer.

106.03.00 Sampling and Testing

The Contractor shall be responsible for process control testing necessary to insure that materials comply with the specifications.

The Engineer reserves the right to require samples and to test products for compliance regardless of prior certification. Testing of materials will be made in accordance with the methods described or designated in the specifications, or as required, and may be conducted at any time during the production, fabrication, preparation and use of the materials.

When the Engineer determines that tests are necessary, the tests will be made by and at the expense of the Contractor unless otherwise specified. The Contractor shall furnish and make available the required samples without charge and shall provide suitable facilities for collecting samples and withhold from use the materials represented by the samples until tests have been made and the materials found to comply with the specifications. The Contractor shall provide safety measures and devices to protect those who take samples and perform tests. Samples shall be made available in ample time to permit testing of the materials prior to use. The Contractor shall have no claim for any delay caused by awaiting test results.

In the absence of any reference specification, materials shall meet the specifications and requirements of the ASTM, AASHTO, or AWWA. When there is no coverage under ASTM, AASHTO, or AWWA, materials shall meet the commercial standards of the Commodity Standards Division of the U.S. Department of Commerce. Lacking such coverage, the materials shall meet

requirements established by reputable industry leaders for high quality products of the kind involved.

All required testing, including that required of the Contractor, shall be performed by or handled through a testing laboratory approved by the Engineer.

If tests are conducted at the expense of the City, and the materials are found out of compliance with the specifications, the Contractor shall bear all costs for testing and of replacement of materials.

106.04.00 Certification of Commercial Products

For commercial products, the Engineer may accept from the Contractor the manufacturer's certification of the product involved under the following conditions.

- a) The certification shall state that the named product conforms to the City's requirements and the representative samples have been tested as specified.
- b) The certification shall include a certified copy of the test results or a certification that such test results are on file with the manufacturer and will be furnished to the Engineer upon request.
- c) The certification shall give the name and address of the manufacturer, the testing agency, the dates of tests, and the means of identification that will permit field determination of the product delivered.
- d) The certification shall be in duplicate. One copy shall be sent with the shipment, the other sent directly to the Engineer.
- e) The City will not be responsible for any costs involved in the certification.

106.05.00 Inspection Requirements

The Contractor shall allow access for the Engineer to all parts of the work and to the plants of producers and fabricators and will furnish the Engineer with every reasonable facility for ascertaining that the materials are in accordance with the contract.

106.06.00 Storage and Protection of Materials

Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be

inspected prior to use in the work. Stored materials shall be located to facilitate prompt inspection.

When shown on the plans or approved by the Engineer, portions of the right of way may be used for storage purposes and for the placing of the Contractor's plant and equipment. Any additional space required shall be provided by the Contractor at the Contractor's expense.

The Contractor shall not use private property for storage purposes without written permission of the property owner or lessee. The Contractor shall furnish copies of such written permission to the Engineer.

106.07.00 Rejected Materials

Materials rejected by the Engineer shall be removed from the site of the work. Rejected material on which defects have been corrected shall not be used until written approval has been given by the Engineer. Failure of the Contractor to comply with the Engineer's directions shall be cause for the Engineer to have the defective material removed from the work site and to deduct the cost of removal from payments due or to become due to the Contractor.

106.08.00 Trade Names, Approved Equals or Substitutions

To establish a basis of quality, certain processes, types of machinery and equipment, or kinds of materials may be specified either by description or process, by designating a manufacturer by name and referring to specific brands or products, or by specifying a kind of material. It is not the intent of the specifications to exclude other processes, equipment or materials of equal value, utility or merit.

Whenever a process, manufacturer's name, brand, item, patented process or patented material is designated or described, it shall be implied the words "or approved equal" follow such name, designation, or description. The determination of acceptable substitutes shall be the sole province of the Engineer and substitutes shall not be ordered or furnished unless approved.

If the proposal includes a list of equipment, materials, or articles for which the Contractor must name the manufacturer at the time of submission of the bid, no substitutions will be permitted without the approval of the Engineer.

106.09.00 Mineral Deposits

When materials sources are shown or described in the contract, the City will acquire and make available to the Contractor the right to take materials from the sources and the right to use the property for plant site, stockpiles and hauling roads.

The quality of the material in the mineral deposits may be acceptable, but the Contractor shall determine the work required to produce finished products meeting the specifications. Because it is not feasible to ascertain from samples the quality of an entire deposit, variations will be considered usual and expected. The Engineer may order use of material from any portion of a deposit and may reject portions of a deposit as unacceptable.

If the Contractor elects to use material from sources other than those shown or described, the Contractor shall acquire the necessary rights to take materials from the sources and shall bear all costs including those for development and exploration and costs which may result from an increase in length of haul. The use of material from such sources will not be permitted until the Engineer determines, from representative samples obtained and tested at the expense of the Contractor, that satisfactory materials are available from the source.

Gravel pits, other than commercially operated borrow pits, shall meet all local, State, and Federal regulations.

106.10.00 City Furnished Equipment and Materials

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

107 - Legal Relations and Responsibilities

107.01.00 Laws and Regulations

107.01.01 General

The Contractor shall keep fully informed of all Federal, State and local laws, ordinances and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect the conduct of the work. Where these Specifications are in conflict with regulations of other agencies having jurisdiction over the work or over the area in which the work is performed, the more restrictive standards or regulations shall apply. The Contractor shall at all times observe and comply with all laws, ordinances, regulations, orders, and decrees. The Contractor shall protect and indemnify the City and the City's Representatives against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order or decree, by the Contractor, Subcontractors, suppliers of materials or services, or others engaged by the Contractor or Contractor's employees.

Vehicles used to provide transportation services in furtherance of this project shall be operated in compliance with the operating authority, lease, safety, and other applicable motor carrier laws administered by the Public Utility Commissioner (PUC). Any questions regarding PUC motor carrier law should be directed to the Motor Investigations Division of the PUC office in Salem.

107.01.02 Protection of the Environment

The Contractor's attention is directed to ORS 279 dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the work.

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

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

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

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

107.02.00 Assignment of Contract and Subletting

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

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

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

The Contractor shall perform with the Contractor's own organization contract work amounting to not less than 50 percent of the amount of the contract as awarded, except that any items designated in the contract as specialty items may be performed by subcontract. The cost of any such specialty items may be deducted from the amount of the contract before computing the amount of work required to be performed by the Contractor's own organization. The term "own organization" refers only to workers employed and paid directly by the Contractor and equipment owned or rented by the Contractor.

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

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

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

107.03.00 No Waiver of Legal Rights

The City shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work from showing the true amount and character of the work performed. The City shall not be precluded or estopped from recovering from the Contractor and/or the Contractor's Sureties damages the City may sustain by reason of Contractor's failure to comply with the terms of the contract. The acceptance, payment, or possession of the work by the City shall not constitute a waiver of any portion of

the contract. A waiver of any breach of the contract shall not be held to be a waiver of any other subsequent breach.

107.04.00 Insurance

The City, its officers, employees and agents will not in any manner be answerable or accountable for any loss or damage from any cause whatsoever resulting to the work, or any part thereof, or to any of the equipment, materials or other things used or employed in prosecuting or completing the work.

The Contractor shall maintain casualty insurance as will protect the Contractor and City from any and all claims which may arise from operations under this Contract or in connection therewith, including all operations of subcontractors. Insurance shall provide limits not less than \$1,000,000 combined single limits comprehensive general or commercial general liability for bodily injury, personal injury and property damage, and automobile liability coverage in not less than the limits for bodily injury and property damage.

Such insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insured the City and those for whose conduct the City is subject to action or suit pursuant to ORS 30.265(1); and shall further provide that the policy shall not be terminated or be canceled prior to the completion of this Contract without thirty (30) days' prior written notice to the City.

Notwithstanding the naming of additional insured, said policy shall protect each insured in the same manner as though a separate policy had been issued to each; but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The Contractor shall carry, at a minimum, automobile liability in the amount of \$1,000,000 aggregate total for all claims arising out of a single accident or occurrence. The automobile liability insurance may be written in combination with comprehensive or commercial general liability insurance.

In addition, the Contractor shall insure the work for 100 percent of replacement value for the life of the contract against all loss or damage by fire, theft, vandalism and malicious mischief. The amount of the insurance may vary with the extent of the work completed but shall be at least equal to the replacement value of the work completed. The insurance policy or policies shall be in the names of the Contractor and the City. Any loss shall be payable to the City, as trustee. Any payments made shall inure to the benefit of the City to the extent of the loss

suffered by the City and the remaining balance for the loss suffered by the Contractor.

Before the contract is executed, the Contractor shall furnish to the City a certificate of insurance for the limits set out above which is to be in force and applicable to the project.

107.05.00 Industrial Accident Protection

The Contractor, Subcontractors, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires workers' compensation coverage for all subject workers.

The industrial accident protection to be provided shall be in full compliance with ORS Chapters 656 and 864.

The Contractor shall certify in the contract that the Contractor is qualified either as a direct responsibility employer or a contributing employer; or is an Independent Contractor who will perform the work on this project without the assistance of others. If the Contractor is going to perform the work on this project without the assistance of others, the Contractor and the City will jointly sign and file with the State Accident Insurance Fund Corporation a declaration that the services rendered under the contract will be rendered as those of an Independent Contractor.

If workers' compensation coverage is required, the Contractor will not be permitted to begin work on the project until verification has been made of the coverage indicated on the contract form entitled "Certification of Workers Compensation Coverage." If coverage is provided by a carrier other than the State, verification cannot be made until the insurance carrier files the guarantee contract with the Workers' Compensation Board. Under Oregon law the carrier may delay 30 days after providing binding coverage before filing the guarantee contract. It is the Contractor's responsibility to see that the insurance carrier has filed the guarantee contract with the Workers' Compensation Board.

107.06.00 Minimum Wage Rates

Projects which are financed wholly or in part by Federal funds require compliance with the Davis-Bacon Act. On these projects wage rates set forth in the Wage Determination Decision of the Secretary of Labor bound with the contract documents will apply.

On projects which are not financed wholly or in part by Federal funds the following will apply.

- a) The Contractor shall comply fully with ORS 279.348 through 279.361. The hourly rate of wage to be paid by any Contractor or Subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed. The obligation of a Contractor or Subcontractor to pay the prevailing rate of wage may be discharged by making the payments in cash, by the making of contributions of a type referred to in ORS 279.348, or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in ORS 279.348, or any combination, where the aggregate of any such payments, contributions and costs is not less than the prevailing rate of wage.
- b) After a contract is executed with any Contractor or work is commenced, the amount of the prevailing rate of wage shall not be subject to attack in any legal proceeding by any Contractor or Subcontractor in connection with that contract.
- c) It shall not be a defense in any legal proceeding that the prevailing rate of wage or overtime pay is less than the amount required to be in the specifications of a contract, or that there was an agreement between the employee and the employer to work at less than the wage rates required to be paid under this Subsection.
- d) Every Contractor or Subcontractor engaged on a project for which there is a contract shall keep the prevailing wage rates for that project posted in a conspicuous and accessible place in or about the project. Contractors and Subcontractors can obtain copies of these wage rates from the Labor and Industries Commissioner without charge.
- e) The minimum hourly rate of wage, not less than the prevailing rate of wage, which may be paid to workers in each trade or occupation employed in the performance of the contract either by the Contractor or Subcontractor or by other person doing or contracting to do the whole or part of the work contemplated by the contract shall be as set forth in the Schedule of Minimum Hourly Wage Rates bound with the contract documents.
- f) The term "prevailing rate of wage" shall mean the rate of hourly wage including fringe benefits as determined by the Commissioner of the Bureau of Labor and Industries.

- g) The Contractor or Contractor's Surety and every Subcontractor or Subcontractor's Surety shall submit to the Engineer written statements, in a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying under oath the hourly rate of wage paid each worker employed upon the work, and further certifying that no worker employed upon the work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract. Certified statements shall be submitted as follows.

For any project 90 days or less from the date of award of the contract to the date of completion of the work, the statements shall be submitted once before the first payment and once before final payment is made of any sum due under the contract.

For any project exceeding 90 days from the date of award of the contract to the date of completion of the work, the statements shall be submitted once before the first payment is made, at 90-day intervals thereafter, and once before final payment is made of any sum due under the contract.

- h) ORS 279.354 requires that a true copy of the certification or certifications required to be submitted pursuant to these provisions shall also be filed at the same time with the Labor and Industries Commissioner.
- i) There is no representation on the part of the City that labor can be obtained at the hourly rates bound with the contract documents. It is the responsibility of Bidders to inform themselves as to local labor conditions and prospective changes or adjustments of wage rates. No increase in the contract price shall be allowed or authorized as a result of the payment of wage rates in excess of those listed.
- j) Workers engaged in the production and delivery of aggregates to be stockpiled and subsequently used in connection with the construction and maintenance of a public road are not required to be paid the prevailing rate of wage provided for in ORS 279.348 to 279.352.

107.07.00 Hours of Work and Rates of Pay

Pursuant to ORS 279.316, the Contractor shall comply fully with ORS 279.334. On Federal Aid projects where provisions of ORS 279.334 are in conflict with Federal requirements, the Federal requirements will apply.

107.08.00 Certification of Contractor's Payroll

A certified copy of the Contractor's or any Subcontractor's current weekly payroll shall be submitted to the Engineer. The certification shall be by the authorized officer or employee of the Contractor or Subcontractor who is responsible for payroll records, or payment of wages.

The certification shall affirm that the payroll covers only those laborers and mechanics employed and paid directly by the Contractor or Subcontractor, and that said payroll covers and includes all laborers and mechanics employed by the Contractor or Subcontractor in the performance of the work under the contract.

107.09.00 Labor

Any person employed on the project, by the Contractor or a Subcontractor, who, in the opinion of the Engineer, does not perform in a proper and skillful manner or whose conduct interferes with the progress of the work shall, at the written request of the Engineer, be removed from the project. That employee shall not be again employed on the project without the approval of the Engineer.

The Contractor's attention is directed to ORS Chapter 659, particularly Section 659.030, which sets forth unlawful employment practices including that of discrimination because of race, religion, color, sex or national origin.

107.10.00 Payment of Obligations

The Contractor shall promptly make payment to all persons supplying labor, equipment, supplies, or materials for the work. The Contractor shall be responsible for any lien or claim filed against the City.

Failure to make payment of any claim when due may necessitate the City paying such claim to the person furnishing the work and charging the amount against payments due or to become due to the Contractor. Such payment shall not relieve the Contractor or Contractor's Surety from the Contractor's obligation for any unpaid claims.

107.11.00 Permits, Licenses, and Taxes

The City shall obtain and pay for the following:

- a) all permits required by the Coast Guard for crossing navigable streams;

- b) all permits required by the Corps of Engineers for encroachments on navigable streams;
- c) all permits required by the Division of State Lands for removal of materials from or depositing materials in waterways or wetlands;
- d) all permits required by the State Department of Geology and Mineral Industries for operations in materials source or disposal areas; and,
- e) all permits required from local agencies for construction of buildings or facilities.

The Contractor shall:

- a) license all vehicles that are subject to Oregon vehicle registration requirements;
- b) procure all other permits and licenses;
- c) pay all fees and taxes required for the work;
- d) comply with ORS 274.530 relating to lease of stream beds; and,
- e) comply with ORS 477.685 relating to clearing and fire hazards on forest lands.

107.12.00 Royalties and Patents

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

107.13.00 Indemnification

The Contractor shall indemnify and save harmless the City, and the City's officers and employees, from all suits, actions or claims of any character brought because of any injuries or damage received or sustained by any person or property on

account of the operations of the Contractor, Subcontractors or the employees of either; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark or copyright; or from any claims or amount arising or recovered under any workman's compensation law or any other law, ordinance, order or decree; and so much of the money due the Contractor under and by virtue of the contract as may be considered necessary by the City may be retained for the use of the City, or, in case no money is due, the Contractor's Surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages have been settled and suitable evidence to that effect furnished to the City; except the money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that the Contractor is adequately protected by public liability and property damage insurance.

107.14 .00 Public Safety and Convenience

The Contractor shall be responsible for all damages to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by or that may result from any act, omission or neglect of the Contractor, Subcontractors, or the employees of either in the performance of the work.

The Contractor shall at all times conduct the work in a manner that will insure the least possible obstruction or hazard to traffic. The convenience of the general public and the residents and the protection of persons and property is of prime importance and shall be provided for by the Contractor in a adequate and satisfactory manner.

The Contractor shall observe all safety instructions received from governmental authorities, but following of such instructions shall not relieve the Contractor from the responsibility or liability for accidents to workers or damage or injury to persons or property. Emergency traffic such as police, fire, and disaster units shall be provided access to the work area at all times.

107.15.00 Sanitary, Health, and Safety Provisions

The Contractor shall observe all rules and regulations of the Federal, State, and local health officials concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to health or safety.

The Contractor shall admit, without delay and without the presentation of an inspection warrant, any inspector of Oregon O.S.H.A.

The Contractor shall maintain, at the work site, all articles necessary for giving first aid to the injured and establish procedures for the immediate removal to a hospital or a doctor's care of employees and other persons injured on the job site.

All accidents causing death or serious injuries or damages shall be reported immediately to the Engineer. The Contractor shall promptly report, in writing, to the appropriate authorities all accidents arising out of, or in connection with, the performance of the work. If any claim is made against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts, in writing, to the Engineer.

The Contractor shall conduct operations in conformity to all laws, regulations, and ordinances or resolutions enacted or adopted by local authorities for the purpose of governing construction noise and noise nuisance. In addition, the following restrictions apply.

- a) General time restrictions.
 - 1) No construction operations shall be performed within 1,000 feet (300 m) of any occupied dwelling unit on legal holidays or between the hours of 10 p.m. and 6 a.m., without the approval of the Engineer.
 - 2) No pile driving or blasting operations shall be performed within 3,000 feet (900 m) of any occupied dwelling unit on legal holidays or between the hours of 8 p.m. and 8 a.m., without the approval of the Engineer.
 - 3) No work shall be performed on Saturdays or Sundays without approval of the City.
- b) Requirements for equipment used on the project.
 - 1) Noise control devices shall be no less effective than those provided on original equipment.
 - 2) Exhausts shall be muffled.
 - 3) Equipment shall comply with pertinent equipment noise standards of the DEQ and City of Keizer Ordinance #93-269.

- c) If a specific noise complaint occurs during construction, the Contractor, at the Contractor's own expense, may be required to implement one or more of the following, as directed by the Engineer.
- 1) Locate stationary construction equipment as far from nearby noise sensitive properties as possible.
 - 2) Shut off idling equipment.
 - 3) Reschedule construction operations to avoid periods of noise annoyance.
 - 4) Notify nearby residents whenever extremely noisy work will be occurring.
 - 5) Install temporary or portable acoustic barriers around stationary construction noise sources.
 - 6) Place material stockpiles between crushing or screening operations and the affected dwelling.

107.16.00 Use of Explosives

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

The transport, storage, and use of all explosives shall be in compliance with all laws and ordinances. Where no local laws or ordinances apply, storage shall be provided satisfactory to the Engineer and in general not closer than 1,000 feet (300 m) from any road or from any building or camping area or place of human occupancy.

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

107.17.00 Railroad Crossings or Rights of Way

Whenever the work involves the crossing of any railroad line or encroachment on any railroad right of way, the Contractor shall submit to the Engineer a schedule of

proposed operations within the railroad right of way which has been approved by the appropriate railroad officials. The Contractor shall comply with all requirements of the railroad company at no cost to the City.

The Contractor shall be responsible to the owners and operators of railroad properties for any damage, injury, expense, loss, inconvenience or delay which may result from the work. When indicated in the contract documents, the Contractor shall give bond or insurance of the kind and in the amount specified to each corporation, company, partnership or individual owning or operating any of the properties affected. Any extension of time granted the Contractor to complete the work shall not relieve the Contractor or the Contractor's Surety from this responsibility.

107.18.00 Right of Way and Easements

The Contractor shall confine construction activities within rights of way, easements, or limits of construction permits. Prior to the use of any property outside these specified boundaries, the Contractor shall file, with the Engineer, the written permission of the property owner. Upon terminating such usage, the Contractor shall file, with the Engineer, a release from all damages signed by the property owner.

The Contractor shall be responsible for any trespass upon or injury to other property resulting from or in connection with the work. The Contractor shall be liable for any claims that may be made due to encroachment of any kind upon private property.

107.19.00 Waste Sites

Excavated materials not suitable for or required in the work shall be deposited on waste sites specified in the contract, or waste sites provided by the Contractor.

The Contractor will advise the City where spoils will be deposited prior to disposal.

The Contractor will be responsible for obtaining permits for waste sites provided by the Contractor. The Contractor shall operate waste sites in conformance with safety and health requirements of State and local agencies.

Disposal of unsuitable or excess material shall be considered incidental work.

108 - Prosecution and Progress of Work

108.01.00 Contractor's Construction Schedule

Prior to beginning the work the Contractor shall submit a proposed schedule to the Engineer showing the beginning time, the order of work, and the time required for completion of the major items of work. The construction schedule shall show the orderly, timely, and efficient prosecution of the work. The construction schedule will be used as an indication of the progress of the work, but does not become a part of the contract.

The Engineer shall approve or disapprove the proposed construction schedule within ten work days after receipt. Disapproved construction schedules shall be revised and resubmitted for approval. The work shall not commence until the construction schedule is approved. The Engineer's review of the Contractor's schedule shall not relieve the Contractor of the requirements of the contract.

When the progress of the work does not correspond to the approved construction schedule, the Engineer may require the Contractor to submit a revised construction schedule. The revised schedule shall be subject to the Engineer's approval or disapproval.

If requested by the Engineer, the Contractor shall provide weekly progress schedules of expected project activities. The progress schedules will be used as an indication of the sequence of the major construction operations and as a check on the progress of the work. The progress schedules shall indicate the Contractor's plan of prosecution of the work in sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, appraise, document, and control their respective contract responsibilities. Any work done without notification to the Engineer is subject to rejection.

108.02.00 Preconstruction Conference

At the request of either the Contractor or Engineer, the Contractor shall meet with the Engineer for a preconstruction conference at a time mutually agreed upon. The meeting may include representatives of the City, Engineer, Contractor, Subcontractor, affected utility companies, and other affected agencies.

The purpose of the conference will be to discuss the construction schedule, items of the work which require special coordinations or documentation and any other appropriate review of the plans and specifications pertaining to the work.

108.03.00 Commencement of Work

The Contractor shall commence work promptly after the Engineer issues the notice to proceed. The Contractor shall notify the City at least two work days prior to the beginning of work or occupation of the project site.

108.04.00 Contract Time

108.04.01 General

It is essential and in the public interest that the work be prosecuted vigorously to completion. Delays in the performance of the work will inconvenience the public, obstruct traffic, interfere with business and commerce, may be expensive to the public and may increase cost to the City.

The period of time allowed for completion of the work under the contract will be set forth in the proposal and contract and will be known as the contract time, as defined in **Section 101**.

The contract time will be expressed in workdays, calendar days, or fixed completion date. The contract time may be subject to adjustment during the progress of the work.

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

108.04.02 Recording of Contract Time

When the contract time is expressed on the basis of workdays or calendar days, the recording of the elapse of such days will begin on the date of the notice to proceed, or on the 10th work day following the date upon which the contract and performance bond forms are mailed to the Contractor for execution, whichever is earlier.

Work will be considered complete and time count stopped when all forms, documents, and final pay estimate have been submitted and a written request or final inspection has been made as per **Section 109.11.00**.

If, after an inspection, the work is found to be unsatisfactory, including cleanup, the contract time count will resume until corrective work has been completed.

If all forms, documents and final pay estimate have not been submitted when final inspection is requested then the Contractor shall have 30 days to submit all forms,

documents and final pay estimate from the date final inspection was requested. The contract time count will resume after the expiration of said 30 days and run until all forms, documents, and final pay estimate have been submitted.

108.04.03 Adjustment of Contract Time

The Contractor shall notify the Engineer in writing of any delay encountered which may be the basis for an adjustment of contract time. Such written notification shall be submitted to the Engineer within two work days of the beginning of the delay and shall set forth the facts upon which the delay is based. Any period of delay occurring more than two work days before the written notification will not be considered for adjustment of contract time unless otherwise determined by the Engineer.

Extensions of time may be granted for causes beyond the control of the Contractor and Subcontractors and without any fault or negligence or participation by them. The Contractor's request for adjustment of contract time shall be in writing with the written consent of the Surety.

The request shall be submitted prior to the contract completion date and shall include the cause of each delay and the amount of time adjustment requested for each cause.

Extensions will be granted only when the Engineer determines the delays actually affect the time necessary for completion of the work. Any adjustment of contract time shall be that which the Engineer determines to be justified and the Engineer's decision in the matter shall be final.

Adjustment of contract time as provided for in these Specifications shall be the Contractor's sole remedy for any delay in completion of the project arising from weather or other causes beyond the control of the Contractor. In no event shall the Contractor be entitled to collect or recover damages, loss or expense incurred by reason of such delay.

The Contractor will be advised of the Engineer's decision within 60 days of receipt of the Contractor's request submitted in accordance with these Specifications.

Causes which will be given consideration for an extension of contract time include, but are not limited to, the following:

- a) errors, changes or omissions in the plans, or errors or changes in the specifications;

- b) failure of the City or the Engineer to act promptly in carrying out obligations and duties;
- c) failure of the City to submit the contract and bond to the Contractor for execution;
- d) performance of extra work; or,
- e) court orders enjoining the prosecution of the work or an act of the City not authorized by the contract or permitted by law.

The Engineer will not consider an extension of contract time based on shortage or inadequacy of labor and equipment, negligence or fault of the Contractor, and other deficiencies which are within the province of the Contractor's control or responsibility. The Engineer may consider an extension of contract time due to unseasonable weather.

The Engineer may instruct the Contractor in writing to increase labor or equipment, or adopt improved methods to expedite the work if progress is not satisfactory. Conformity to the Engineer's instructions shall not relieve the Contractor of responsibilities under the contract.

When work under a contract is suspended pursuant to ORS 279, is not the result of a labor dispute, and the contract is not terminated, the Contractor may be entitled to an extension of the contract time and compensation for costs resulting from the suspension.

108.05.00 Exclusions

The Engineer may grant exclusions from elapse of contract time when the Contractor is prevented from performing the work for the following causes or reasons:

- a) epidemics, quarantine restrictions, strikes, labor disputes, freight embargoes and acts of the public enemy; or,
- b) periods when the work is temporarily suspended upon written order of the Engineer.

The exclusions will be to the nearest one half day.

108.06.00 Liquidated Damages

When the work is not completed within the contract time or within the final adjusted contract time, damage may be sustained by the City. When it will be impractical or difficult to determine the actual damage which the City will sustain, it is agreed that the Contractor shall pay to the City, not as a penalty but as liquidated damages, the per diem amount listed in the following Schedule of Liquidated Damages for each and every such day elapsed in excess of the contract time or the final adjusted contract time.

SCHEDULE OF LIQUIDATED DAMAGES			
Original Amount of Contract		Amount of Liquidated Damages	
For More Than	To and Including	Calendar Day*	Workday
\$ 0	\$ 25,000	\$ 45	\$ 60
25,000	50,000	75	105
50,000	100,000	120	165
100,000	500,000	220	310
500,000	1,000,000	380	530
1,000,000	2,000,000	500	700
2,000,000		600	840

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

Permitting the Contractor to continue and finish the work after the contract time or adjusted contract time has expired shall not be a waiver of any of the City's contract rights.

Payment of liquidated damages shall not release the Contractor from any obligations to complete the work, nor constitute a waiver of the City's right to collect any additional damages which the City may sustain by failure of the Contractor to carry out the terms of the contract. The liquidated damages shall be full and complete payment only for failure of the Contractor to complete the work on time. The amount of liquidated damages accrued may be deducted from payments due or to become due to the Contractor.

108.07.00 Suspension of Work

The Engineer or City may, for good and sufficient cause, temporarily suspend the Contractor's operations of all or part of the work. Where appropriate, the Engineer shall give the Contractor three days' notice of such suspension. The work shall be resumed within five days after notice to resume has been given the Contractor by the Engineer. The Engineer may allow the Contractor an extension of time for completion of the work corresponding to the total period of the temporary suspension.

When a temporary suspension is ordered by the Engineer, and is not the result of the Contractor's fault or failure, the Contractor shall be reimbursed for the rental of unused equipment and other unavoidable expenses accruing by reason of the suspension. The Contractor will not be entitled to damages, intangible or overhead costs, or anticipated profits arising from the temporary suspension.

The Engineer or City shall have authority to suspend the work wholly or in part for cause due to the Contractor's failure to carry out the provisions of the contract or to carry out orders. The Engineer shall determine the length of any suspension due to conditions considered unsuitable for the performance of the work or for any reason in the public interest.

If the Contractor voluntarily suspends the work because of seasonal conditions or other unsuitable conditions, an order to suspend the work may not be required or issued. In all cases of suspension, the work shall not be resumed until ordered by the Engineer.

During any suspension of the work, the Contractor shall be responsible for the work and take every precaution to prevent damage to or deterioration of the work including temporary traffic control. The Contractor shall be responsible for damage to the work that may occur during suspensions of work the same as though the damage had occurred while the work was in progress. If the Contractor fails to provide for temporary traffic control and to maintain the work, the Engineer may immediately proceed to maintain the work. The cost of such maintenance will be deducted from payments due or to become due to the Contractor.

The Contractor's voluntary or involuntary suspension or slow down, with or without the approval of the Engineer, will not be grounds for claims by the Contractor for damages, idle equipment or labor, or extra compensation. No allowance or compensation will be made on account of such suspensions of the work.

108.08.00 City's Right to Do Work

If the Contractor neglects to prosecute the work properly, or fails to perform any of the terms or conditions of the contract, the City may, without prejudice to any other remedy, supply or correct any deficiency or defect. Such action by the City shall be taken after five work days' notice by the Engineer to the Contractor and the Contractor's Surety. If, in the judgment of the Engineer, an emergency or danger to the work or to the public exists, the City may take action without notice. The cost of such action by the City shall be deducted from payments due or to become due to the Contractor. The Contractor or the Contractor's Surety shall pay to the City any excess of cost over payments due.

108.09.00 Termination of Contract

The contract may be canceled by the City for any willful failure or refusal on the part of the Contractor to faithfully perform the work according to all of the terms and conditions of the contract. If the City cancels the contract, neither the Contractor nor the Contractor's Surety shall be relieved from responsibility for damages or losses suffered by the City on account of the Contractor.

The City may, at the written request from the Contractor, terminate the contract or a portion of the contract if the Contractor is prevented from completing construction of the project for reasons beyond control of the Contractor. These reasons may include non-availability of materials, phenomenon of nature of catastrophic proportions or intensity, executive orders of the President of the United States related to national defense, acts of Congress, or acts of State, County or municipal governments.

When any part of the contract is terminated before completion of all of the work, payment will be made at the contract unit price for the actual number of units or items of work completed, or as mutually agreed to for items of work partially completed. No claim for loss of anticipated profits will be allowed.

Reimbursement for mobilization expenses, when not included in the contract as a separate pay item, including moving equipment to and from the work, will be considered where the volume of work completed is too small to compensate the Contractor for these expenses under the contract prices. When an item for mobilization appears in the contract as a separate pay item, the amount to be paid the Contractor will be the mobilization amount earned in accordance with **Section 201**.

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

Termination of any or all of the contract shall not relieve the Contractor of the responsibilities for the completed work, or relieve Contractor's Surety of the obligation for any just claims arising out of the work performed.

108.10.00 Default by Contractor

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

- a) be adjudged bankrupt;
- b) make a general assignment for the benefit of the Contractor's creditors;
- c) have a receiver appointed on account of Contractor's insolvency;
- d) fail to supply enough properly skilled worker, proper materials, or adequate equipment for the efficient prosecution of the work;
- e) fail to make prompt payment to Subcontractors or suppliers;
- f) disregard laws, ordinances, or the instructions of the Engineer; or,
- g) be guilty of a substantial violation of any provision of the contract.

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

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

108.11.00 Completion and Acceptance

After completion of the work specified in the contract or permit, and completion of the final inspection the Engineer will recommend to the City the work be accepted and payment be made.

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

A letter of acceptance of the project, submitted by the Engineer or other officer of the City, shall constitute final acceptance of the work on the date of the certificate or letter. Such letter of acceptance shall not constitute an acceptance of any unauthorized work. The Contractor shall be notified in writing within ten (10) calendar days after final acceptance of the work.

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

108.12.00 Final Warranty

The work is guaranteed by the Contractor for a specified period from the date of final acceptance by the City. If no warranty period is specified, the work shall be guaranteed for one year from the date of final acceptance by the City.

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

- a) place in satisfactory condition all guaranteed work;
- b) correct all damage to the building, site, equipment or contents which is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the contract; and,
- c) correct any work, material, equipment, or contents of a building, structure or site disturbed in fulfilling the guarantee.

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

If the Contractor fails within ten days to proceed to comply with the terms of this warranty, the City may have the defects corrected. The Contractor and

Contractor's Surety shall be liable for all expense incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to the Contractor and the Contractor or Contractor's Surety shall pay the cost.

The City may require a Developer to sign an Improvement Agreement, accompanied with security, on unfinished work.

109 - Measurement and Payment

109.01.00 Measurement of Quantities

109.01.01 General

Measurement will be according to the system of weights and measures recognized by the United States Bureau of Standards. Methods of measurement and computation of quantities will conform to generally recognized engineering and construction practice. Computer generated or electronic digital measuring and computing devices may be used.

109.01.02 Linear Measure

Measurement of pay lengths will be by the linear foot (meter), measured along the line and grade of the item involved as actually placed and accepted.

109.01.03 Area

Areas will be measured on the surface of the item and may be expressed in square feet (m^2), square yards (m^2) or acres (m^2 or hectares) as appropriate for the particular item involved.

109.01.04 Volume

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

All materials which are specified for measurement in the vehicles by which they are transported, termed "Vehicle Measurement", shall be transported in vehicles of a type and shape that the maximum water level capacity may be readily measured and calculated to the nearest 0.1 cubic yard (0.07646 m^3) by the Engineer. Pay quantities will be determined at the point of delivery with no allowance for settlement of material during transit. Payment will not be made for material in excess of the maximum water level capacity and deductions will be made for loads below the maximum water level capacity.

Volumes of concrete and masonry in structures will be measured according to the neat lines as shown on the plans or as changed by order of the Engineer.

When requested by the Contractor and approved by the Engineer in writing, material specified to be measured by the cubic yard (m^3) may be weighed and will be converted to cubic yards (m^3) for payment purposes. Factors for conversion

from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before this method of measurement of quantities is used.

109.01.05 Weight

When measurement for materials is on a weight basis, the quantities will be determined by weighing the material on certified weigh scales. The Contractor shall provide the scales at no expense to the City and shall transport the materials so they can be weighed on the scales provided.

The scales shall be licensed by the Oregon Department of Agriculture. The Contractor shall be responsible for maintaining the scales in an accurate condition at all times.

Vehicle scales shall be inspected and the accuracy tested every six months. All testing shall be by the Oregon State Department of Agriculture, the Oregon State Department of Transportation, or an approved scale service company. Testing by a scale service company shall be done by using a minimum of 10,000 pounds (4530 kg) of test weights certified by the Department of Agriculture. Copies of scale inspection and testing results shall be furnished by the Contractor.

In addition to the required six-month scale examinations, the scales shall be inspected and the accuracy tested as often as the Engineer deems necessary.

Scales installed at a new site shall be inspected and the accuracy tested before use.

Material will be weighed in the hauling vehicle when loaded for delivery to the work site.

Tare weights will be determined by weighing empty vehicles at intervals as the Engineer requires to ensure accuracy of pay load weights. The determination of tare weights and the weight of loaded vehicles will be to the nearest 0.01 ton (0.009 72 metric ton).

If scale accuracy tests reveal the scales have been indicating less than the true weight, no additional payment will be allowed for previously weighed materials. If the tests reveal that scales have been indicating more than the true weight, all materials received since the last passing accuracy test, or the time at which the Engineer determines the problem occurred, will be reduced by the amount of error in excess of the tolerance allowed by State law.

When approved by the Engineer, measurement of bituminous materials, Portland Cement, lime and similar bulk materials that are shipped by rail or truck may be by use of the supplier's shipping invoice with net scale weights or volumes that are converted to weight. The weights and volumes are subject to correction when material has been lost, wasted, or otherwise not incorporated in the work.

Portland Cement will be measured by the pound (kg), hundredweight, ton (metric ton), sack, bag or barrel. The term barrel of cement will mean 376 pounds (170.55 kg). The terms sack and bag of cement will each mean 94 pounds (42.6384 kg).

109.01.06 Lump Sum

Lump sum means the work described is to be done, complete and accepted, without further measurement. Lump sum will be in effect without further measurement unless changes are ordered in writing by the Engineer. The estimated quantities of the work to be performed may be listed in the contract documents to provide a basis for adjustment of payment in the event changes in the work are ordered by the Engineer. These estimated quantities are to be considered as approximate and no guarantee is made that computations based on the details and dimensions shown on the plans will equal the estimated quantities. If no changes are made in the work, no allowance will be made in the event the quantities based on the Contractor's computations overrun or underrun the estimated quantities.

109.01.07 Haul Distance

When the hauling of materials is specified to be on a "yard-mile" (m-km) or "ton-mile" (metric ton-km) basis, the pay haul distances will be measured along the shortest route which the Engineer determines from the point at which the specified material is produced, or from the point of unloading if the materials are rail or water shipped, to the point at which the specified material is incorporated in the work. Measurement of pay haul distances will be in half-mile (0.8045 km) units, fractional half-miles (0.8045 km) being allowed for as full half-miles (0.8045 km).

109.02.00 Payment for Work

The Contractor shall accept the compensation as full payment for furnishing all materials, labor, tools, and equipment necessary to complete the work. Compensation shall include loss or damage arising from the nature of the work or action of the elements, or any unforeseen difficulties which may be encountered during the prosecution of the work.

The quantities listed in the bid schedule do not govern final payment. Payments to the Contractor will be made only for the actual quantities of the work performed and for the quantities of work performed as extra work or under supplemental agreement.

109.03.00 Compensation for Alteration of Contract

Unless changes and alterations in the plans, or quantities, or details of construction materially change the character of the work to be performed or the unit costs, the Contractor shall accept as payment the unit prices listed in the bid schedule.

If the character of the work or the unit costs are materially changed, compensation for the work will be made on the basis of prices agreed to in advance of the performance of the work. If no prices are agreed upon, then an allowance may be made in an amount the Engineer determines to be fair and equitable for the actual cost of the work.

Under no conditions will the allowance for the work be more than the amount justified by the Engineer on a force account basis.

109.04.00 Eliminated Items

The Engineer shall have the right to eliminate, omit or cancel any portion of the contract relating to the construction of any item or part of any item. The Contractor shall be paid a fair and equitable amount covering all items of actual cost incurred directly in connection with the eliminated work and prior to the date of elimination of the work. The work completed before elimination shall be paid for at unit prices, or on a force account basis.

Acceptable materials ordered by the Contractor or delivered to the work site prior to the date at elimination of the work may be purchased by the City at actual cost.

109.05.00 Payment for Extra Work

Upon written order by the Engineer, the Contractor shall carry out extra work at prices agreed upon between the Contractor and the City. If the Engineer and Contractor do not agree on prices, the extra work shall be paid as force account work.

109.06.00 Payment for Force Account Work

109.06.01 General

The Contractor shall perform extra work on a force account basis when directed in writing by the Engineer. After receipt of written authorization the Contractor shall provide an itemized force account estimate of the cost. Progress payments will be made only when the itemized force account estimate has been approved by the City.

109.06.02 Labor

Wages of supervisors, equipment operators, and skilled, semiskilled and common laborers assigned to the specific operation will be reimbursed, at contract or actual payroll rate of wages per hour and actual fringe benefits paid, for each hour that the employees are actually engaged in the performance of the force account work. Reimbursement for hourly wage rates and benefits shall not exceed prevailing wage rates and benefits for the class or classes of work performed under force account.

If the Engineer directs or approves overtime work, overtime hours will be reimbursed as provided by existing laws and regulations.

In addition to wages and fringe benefits, reimbursement will be allowed for indirect labor costs as follows:

- a) Social Security Tax at the percentage legally required;
- b) Unemployment Tax at the percentage legally required;
- c) Contractor's Public Liability Insurance at the policy percentage rate; and,
- d) Contractor's Property Damage Liability Insurance at the policy percentage rate, including coverage for damage due to blasting and explosions when additional coverage is secured on projects requiring blasting.

109.06.03 Materials

The cost of material used will be reimbursable at the actual cost of the material, including applicable tax and transportation charges, shown on invoices.

109.06.04 Equipment

Equipment, owned or rented, that is mutually considered necessary, will be reimbursed at equipment rental rates.

The hourly rental rate will be determined using the monthly rental rates taken from the current edition of the Rental Rate Blue Book for Construction Equipment and dividing by 176. The daily rental rate for equipment used on a 24-hour basis will be determined by dividing the monthly rental rate by 22.

To the above rates, add the predominant area adjustment percentage for the state as shown on the area adjustment map in the Rental Rate Blue Book.

An allowance will be made for operating costs for every hour the machinery or equipment is operating. If machinery or equipment is required at the work site, but is not operating, compensation will be at the hourly rental rate, exclusive of operating cost.

In case of machinery or equipment not in the Rental Rate Blue Book, a monthly rate will be computed on the basis of 6 percent of the manufacturer's list price for sale of new equipment. The hourly rate in this case will be determined by dividing the monthly rate by 160, when actually operating, and by 176 when at the work site but not operating.

For equipment used on a 24-hour basis and having no rate listed in the Rental Rate Blue Book, the daily rate will be 6 percent of the manufacturer's list price for the sale of new equipment, divided by 22.

109.06.05 Services by Others

For any service such as temporary traffic control, engineering services, or specialized construction analysis not considered as subcontract work the Contractor will be compensated at the invoice price plus 7 percent to cover administration and other costs.

109.06.06 Insurance

When required, railroad's protective public liability insurance or railroad's protective property damage liability insurance will be paid at the policy premium rate.

109.06.07 Subcontract

For work performed by a Subcontractor, payment will be as described for the Contractor.

109.06.08 Overhead and Profit

To cover administration, general superintendence, other overhead, bonds, insurance, anticipated profit, and use of small tools and equipment for which no rental is allowed, an allowance of 25 percent will be added to the labor cost, the material cost, and the equipment cost.

The overhead and profit allowance for subcontract work shall be 7 percent of the total force account invoice for the subcontract work.

109.06.09 Invoices

The Contractor and the Engineer will review the record of extra work done on a force account basis at the end of each day.

The Contractor shall submit invoices detailing labor, material, equipment costs, overhead and profit, insurance premiums and subcontractor costs, including overhead and profit. The Contractor shall provide supporting documents for all invoice items. The required statements shall be filed no later than the month following that in which the work was performed.

109.07.00 Advances on Materials

Allowances may be made at the discretion of the City in the partial payments to the Contractor for acceptable materials which are to become a part of the work.

Materials must be acceptably stored or stockpiled on the project or in close proximity to the project. The Contractor shall furnish a written permit giving the City the right to enter upon and remove the materials for a period of not less than 6 months after completion of the project.

No allowances will be made in the partial payments to the Contractor for living or perishable plant materials.

Advances on materials will not be made unless the following conditions are met.

- a) The Contractor has made a written request for allowance for materials and, if required by the Engineer, the request is accompanied by written consent of the Contractor's Surety.
- b) The total value of all materials must be at least \$5,000 and the value of any single class of material must be at least \$1,000.
- c) If the material has been purchased, the Contractor shall provide proof of payment for the purchased material.
- d) The material meets specifications and required test results or certifications are on file with the Engineer.
- e) The material is clearly marked and identified as being specifically fabricated, produced, and reserved for use on the project.

The allowances shall be in amount not exceeding the net cost to the Contractor of the material f.o.b. the work or approved site. As a basis for estimating materials on hand and the cost, the Contractor shall provide the Engineer with invoices, freight bills, and other information concerning the materials.

In the event the contract is terminated or canceled and the City elects to terminate the employment of the Contractor, the Contractor's Surety, shall provide the City with immediate and peaceful possession of all materials on which the Contractor has received progress payments. If the Contractor or Contractor's Surety cannot provide peaceful possession of the materials, then the Contractor, or Contractor's Surety, shall immediately refund to the City the total amount of all the progress payments for the materials.

109.08.00 Allowance for Materials Left on Hand

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

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

Responsibility for excess materials delivered to the work or stored at storage sites without authority from the Engineer will rest with the Contractor. Any allowance

that may be made to the Contractor for such excess materials will be under conditions and prices acceptable to the Engineer.

109.09.00 Progress Payments and Retainage

109.09.01 General

At a regular period each month the Engineer will make an estimate of the amount and value of work accomplished and an estimate of the amount and value of acceptable material to be incorporated in the completed work which has been delivered and acceptably stored. The sum of these values will be defined as "the value of work accomplished".

The estimates upon which progress payments are based are not represented to be accurate estimates, and all quantities shown are subject to correction in the final estimate.

Progress payment shall not be construed as an acceptance or approval of any part of the work covered and shall in no manner relieve the Contractor or Contractor's Surety from obligations under the contract.

No payment shall release the Contractor or Contractor's Sureties.

109.09.02 Progress Payments

Progress payments will be equal to the value of work accomplished, less such amounts as may have been previously paid, less such other amounts as may be deductible or as may be owing and due to the City, and less an amount to be retained.

109.09.03 Retainage

The amount to be retained will equal 5 percent of the value of completed work except as follows.

- a) When the contract work is 50 percent completed, the Engineer may reduce or eliminate the retainage on the progress payments for the remaining work accomplished.
- b) When the contract work is 97-1/2 percent completed, the Engineer may reduce the retained amount to 100 percent of the value of the contract work remaining.

- c) Retainage will not be withheld from payments for force account work.

In accordance with the provisions of ORS 279.435, upon written request of the Contractor, the City will deposit amounts withheld as retainage in an interest bearing account in a bank, savings bank, trust company, or savings association for the benefit of the City. Interest shall accrue to the Contractor.

If the City incurs additional costs as a result of the exercise of any of the options for retainage, the City may recover such costs from the Contractor by reduction of the final payment. As the work progresses, the City shall, upon demand, inform the Contractor of all accrued costs.

The Contractor may deposit bonds or securities with the City or in any bank or trust company to be held in lieu of the cash retainage for the benefit of the City. In such event, the City shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the contractor in accordance with ORS 279.575. Interest on such bonds or securities shall accrue to the Contractor.

Bonds and securities deposited or acquired in lieu of retainage shall be of a character approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

- a) Bills, certificates, notes, or bonds of the United States.
- b) Other obligations of the United States or its agencies.
- c) Obligations of any corporation wholly owned by the Federal Government.
- d) Indebtedness of the Federal National Mortgage Association.

The bonds and securities deposited by the Contractor shall be fully assigned to the City or be payable to the City on demand.

109.10.00 Deferment of Payments

No final payment will be made until all orders made by the Engineer to the Contractor in accordance with the contract are complied with, and all claims or liens filed or prosecuted against the City contrary to the contract are satisfied.

In the event a complaint or charge of unlawful employment practices pursuant to the provisions of ORS 659 is filed against the Contractor with the Commissioner of Labor, and the Commissioner of Labor issues a cease and desist order as defined

in ORS 659, no further payments will be made until all of the provisions of the cease and desist order have been complied with by the Contractor.

109.11.00 Final Estimate and Payment

The Contractor shall notify the Engineer, in writing, when work is considered complete and the Engineer shall, within 15 work days after receiving the notice, either accept the work or notify the Contractor of the work yet to be performed. If the work is accepted, the Engineer shall notify the Contractor and will make a final estimate and recommend acceptance of the work as of a certain date. Upon approval and acceptance by the City, the Contractor will be paid a total payment equal to the amount due under the contract including all retainage.

Prior to final payment, the Contractor shall deliver to the City a receipt for all amounts paid or payable to the Contractor and a release and waiver of all claims against the City arising from or connected with the contract and shall furnish satisfactory evidence that all amounts due for labor, materials and all other obligations have been fully and finally settled, or are fully covered by insurance.

109.12.00 Acceptance of Final Payment

The acceptance by the Contractor of the final payment shall release the City and the Engineer from all claims and all liability to the Contractor for all things done or furnished in connection with the work, and for every act of the City and others relating to or arising out of the work.