



# **GENERAL CONDITIONS**

**REVISION 5 – JANUARY 2008**

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**ARTICLE – A**  
**DEFINITIONS & ABBREVIATIONS**

A.1. CONTRACT DOCUMENTS or “CONTRACT”:

1. The "Contract Documents" consist of the Invitation to Bid, the Proposal, the Agreement, the Bonding requirements, the Insurance requirements, the Instructions to Bidders, the General Conditions, Special Provisions, the Technical Specifications, and the Plans, including all modifications (addenda) thereof incorporated into the bound Documents before their execution. These form the Contract and shall also be known as the Bid Documents.

A.2. OWNER:

1. Wherever the word "Owner" or “city” and/or “agency” occurs in these Contract Documents, the word shall signify the City of Woodburn, Oregon, acting through its duly authorized officers, Council and/or Contract Review Board.

A.3. CONTRACTOR:

1. Wherever the word "Contractor" occurs in these Contract Documents, the word shall signify the party or parties contracting with the Owner to perform the work as outlined and contemplated in the Contract Documents.

A.4. ENGINEER:

1. Wherever the word "Engineer" occurs in these Contract Documents, the word signifies the City Engineer for the City of Woodburn, Oregon.

A.5. WRITTEN NOTICE:

1. Wherever the term "Written Notice" occurs in these Contract Documents, the term shall signify a written communication delivered in person to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended, or, if delivered or sent by registered mail, to the last business address known to him who gives the notice.

A.6. WORK:

1. Wherever the word "Work" occurs in these Contract Documents, the word shall signify all material, labor, tools, and all appliances, machinery, and appurtenances necessary to perform and complete everything specified in the Contract Documents or shown on the Plans and such additional items of labor, material, and equipment, 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.

A.7. BIDDER:

1. Wherever the word "Bidder" occurs in these Contract Documents, the word shall signify any person, firm, partnership, or corporation submitting construction proposals on this project.

A.8. PROPOSAL:

1. Wherever the word "Proposal" occurs in these Documents, the word shall signify the bid, in unit prices and/or lump sums submitted, by a Bidder to the Owner, for consideration of the work contemplated.

A.9. DAYS:

1. Wherever the word "Days" occurs in these Documents, it shall mean contract days and the word shall signify calendar days; 7-days per week, 365-days per year.
2. Workdays shall be Monday through Friday excluding Holidays.
3. Holidays shall be the Holidays recognized by the City of Woodburn, OR., and on the day of the week to be observed as designated by the City Council for Department offices to be closed.

A.10. SUBMITTAL:

1. Wherever the word "Submittal" occurs in these Documents, the word shall signify working drawings, catalog cut sheets, brochures, swatches, test samples, certified lab test results and the like, submitted by the Contractor to the Engineer, for consideration to be incorporated into the work and process as described in Article D.13

A.11. ARCHITECT:

1. Whenever the word "Architect" occurs in these documents the word shall signify the Architectural firm of \_\_\_\_\_

A.12. SUB-CONTRACTOR:

1. Whenever the word "Sub-Contractor" occurs in these documents the word shall signify a person or entity that has a direct or indirect contract with the Contractor to perform a portion of the work at the site. Sub-Contractors have no binding relationship to the Owner except what is allowed by Oregon Law; see Article D(3).

A.13. MANUFACTURER:

1. Whenever the word "manufacturer" occurs in these documents the word shall signify a person or entity who has an agreement with the Contractor to supply specified and/or incidental parts, material, equipment, tools, appurtenances, etc. for performance of the work. The term manufacturer shall be synonymous with supplier even though the supplier may be a separate and independent agent retailing for several or varying manufacturers.

A.14. CONTRACT REVIEW BOARD:

1. The Owner's ultimate authority is the elected officials of the City Council for the City of Woodburn, OR. The Council also operates as the Contract Review Board under ORS 279.055 and the Attorney General's Model Public Contract Rules. All decisions of the Contract Review Board are final.

A.15 FIELD DIRECTIVE:

1. Supplemental instructions, clarifications and/or minor changes consisting of a written directive, which may or may not modify the Contract amount.

A.16 NOTICE TO PROCEED:

1. A written notice to the Contractor from the Agency to begin tasks required by the Contract to break ground and commence construction.

A.17 EXTRA WORK DIRECTIVE:

1. Written order issued by the Engineer modifying or requesting work not otherwise directed in the Contract and establishing a cost. The cost of this order has to be approved by the Engineer prior to work beginning.

A.18 NOTICE OF AWARD:

1. Written notice to the Contractor from the Owner that the Contract Review Board has approved award of the apparent lowest bidders offer. Actual award will be determined when both parties sign the Construction Agreement.

A.19 CONSTRUCTION AGREEMENT:

1. Also called the "Agreement" is the signed form binding the Owner to the Contractor for the offer included in the Bid Documents and acted upon by the Owner.

A.20 ABBREVIATIONS:

1. The following is a list of common professional and industry abbreviations which may be referred to in these contract documents.

AA	Aluminum Association
AAN	American Association of Nurserymen
AAMA	American Architectural Manufacturers Association
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGA	American Gas Association
AISC	American Institute of Steel Contractors
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ALSC	American Lumber Standard Committee
AMCA	Air Moving and Conditioning Association
ANSI	American National Standards Institute
APA	American Plywood Association
APWA	American Public Works Association
AREA	American Railway Engineering Association
ARI	Air Conditioning and Refrigeration Institute
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWI	Architectural Woodwork Institute
AWPB	American Wood Preservers Bureau
AWS	American Welding Society
AWWA	American Water Works Association

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BHMA	Builders Hardware Manufacturer's Association
CGA	Compressed Gas Association
CISPI	Cast Iron Soil Pipe Institute
CRSI	Concrete Reinforcing Steel Institute
FM	Factory Mutual
FS	Federal Specification
GA	Gypsum Association
HI	Hydraulic Institute
ICBO	International Conference of Building Officials
IEEE	Institute of Electrical and Electronics Engineers, Inc.
ISA	Instrument Society of America
JIC	Joint Industry Conferences of Hydraulic manufacturers
MS	Military Specification
MUTCD	Manual Uniform Traffic Control Devices (w/ Oregon Supplements)
NBHA	National Builders' Hardware Association
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NHLA	National Hardwood Lumber Association
NLMA	National Lumber Manufacturers' Association
NWMA	National Woodwork Manufacturers' Association
ODOT	Oregon Department Of Transportation
OSHA	Occupational Safety and Health Act
PS	Product Standard Section
RLM	RLM Standards Institute, Inc.
RMA	Rubber Manufacturers' Association
SDI	Steel Door Institute
SMACNA	Sheet Metal and Air Conditioning Contractors National Association
UBC	Uniform Building Code
UL	Underwriters' Laboratories, Inc.
UMC	Uniform Mechanical Code
UPC	Uniform Plumbing Code
WCLIB	West Coast Lumber Inspection Bureau
WWPA	Western Wood Products Association

**ARTICLE – B**  
**CONTRACT DOCUMENTS**

B.1. INTENT OF CONTRACT DOCUMENTS:

1. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intent of the Documents is to require that the Contractor shall furnish all labor and material (except specific items to be furnished by the Owner or by the others when specifically set forth in the Contract Documents), equipment, machinery, and transportation necessary for the proper execution of the work. Materials or work described in words, which so applied, have a well-known technical and trade meaning shall be held to refer to such recognized standards.

B.2. INCONSISTENCIES AND OMISSIONS:

1. Where inconsistencies between the Special Provisions and any other part of these Documents, the Special Provisions shall govern. Any discrepancies, omissions or errors, found in the Contract Documents or differences between the site conditions and those indicated in the Contract Documents shall be reported to the Engineer immediately. The Engineer will correct, in writing, such omissions or errors, within a reasonable time.
2. In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:
  1. Bid Proposal
  2. Special Provisions
  3. General Conditions
  4. Plans
  5. Technical Specifications
3. Dimensions on plans shall take precedence over scale dimensions; detailed plans shall take precedence over general plans.

B.3. ALTERATIONS:

1. The Owner, without invalidating the Contract may order extra work or make changes by altering, adding to, or deducting from the work. All such work shall be executed under the conditions of the original Contract, except that claim for extension of time and payment for extra work caused thereby shall be adjusted at the time of ordering such change. In giving instructions, the Engineer may order minor changes in the work not involving extra cost and not inconsistent with the purposes of the structure, but otherwise, except in emergency endangering life or property, extra work or deductions from the work shall be performed only in pursuance of a written order from the Owner, signed or countersigned by the Engineer, or written notice from the Engineer stating that the Owner has authorized the deduction, extra work, or change; and no claim for additional payment shall be valid unless so ordered. If the work is reduced by alterations, such action shall not constitute a claim for damages based on loss of anticipated profits.

B.4. VERIFICATION OF DATA:

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

B.5. COPIES TO BE KEPT ON THE WORK:

1. The Contractor shall keep one copy of the Specifications and Plans on the work site, in good order and available to the Engineer.

B.6. COPIES TO BE FURNISHED:

1. The Engineer will furnish to the Contractor, on request and free of charge, six (6) copies of the Contract Specifications and six (6) sets of full-scale plans. Additional copies may be obtained on request by paying the actual cost of reproduction.

B.7. OWNERSHIP OF DRAWINGS:

1. All Plans, Drawings, Specifications, and copies thereof furnished are the property of the Engineer. They are not to be used on other work and shall be returned to him upon request, at the completion of the work. All models are the property of the Owner.

**ARTICLE – C**  
**THE ENGINEER**

C.1. AUTHORITY OF THE ENGINEER:

1. The Engineer is the Owner's representative during the construction and shall observe the work in progress on behalf of the Owner. He has authority to stop the work whenever such stoppage may be necessary to ensure the proper execution of the Contract. He shall also have authority to reject all work and materials, not conforming to the Contract.

C.2. ENGINEER'S REPRESENTATIVES:

1. The Engineer may assign Assistants to various portions of the work. It is understood that such assistants shall have the power, in the absence of the Engineer, to issue instructions and make decisions within the limitations of the authority of the Engineer. The authority of such assistants shall, however, be limited to the particular portion or phase of the work to which they are assigned and by the particular duties assigned to them.

C.3. INSPECTION:

1. The Engineer will observe the work to the extent necessary to determine that the provisions of the Contract Documents are being properly fulfilled. All materials furnished and work performed under these Contract Documents will be subject to rigid inspection. The inspection of the work done shall not relieve the Contractor of his obligations to furnish materials and perform acceptable work in conformance with these Contract Documents.

C.4. REJECTED MATERIALS:

1. Any material condemned or rejected by the Engineer due to nonconformity with the Contract Documents shall be removed at once from the vicinity of the work site by the Contractor at his own expense, and the same shall not be used on the work.

C.5. UNNOTICED DEFECTS:

1. Any defective work or material that may be discovered by the Engineer before the final acceptance of work, or before final payment has been made, or during the guarantee period, shall be removed and replaced by work and materials which shall conform to the provisions of the Contract Documents. Failure on the part of the Engineer to condemn or reject, bad or inferior work or materials shall not be construed to imply acceptance of such work or materials.

C.6. RIGHT TO RETAIN IMPERFECT WORK:

1. If any part or portion of the work done or material furnished under this Contract shall prove defective and not in accordance with the Plans and Specifications, and if the imperfection in the same shall not be of sufficient magnitude or importance as to make the work dangerous or undesirable, or if the removal of such work will create conditions which are dangerous or undesirable, the Owner shall have the right and authority to retain such work, but may make such deductions in the final payment therefore as may be just and reasonable.

C.7. SURVEYING:

1. The Engineer will furnish, only, baseline and benchmark(s) at locations in the field. Contractor shall employ these to establish construction stakes in conformance with the horizontal and vertical geometry indicated on the plans.

**ARTICLE – D**  
**THE CONTRACTOR**

D.1. SUBCONTRACTING:

1. Bidders shall submit a “First-Tier Sub-Contractor’s Disclosure Form” in accordance with the Instructions to Bidders.
2. The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.
3. Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the Owner.

D.2. PERMITS AND LICENSES:

1. The Contractor shall keep himself fully informed of all local ordinances, State and Federal laws affecting the work herein specified. He shall at all times comply with said ordinances, laws, and regulations, and protect and indemnify the Owner and its officers and agents against any claim or liability arising from or based on the violation of any such laws, ordinances, or regulations. Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor. Permits, licenses, and easements for pavement structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified.

D.3. SUPERINTENDENCE:

1. The Contractor shall have on site a competent superintendent and necessary assistants, all satisfactory to the Engineer. The Contractor shall give efficient supervision to the work, using his best skill and attention. The superintendent shall not be changed, except by consent of the Engineer, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ.

D.4. RECEPTION OF ENGINEER'S DIRECTION:

1. The superintendent, or other duly authorized representative of the Contractor, shall represent the Contractor in his absence, and all directions given to him shall be as binding as if given to the Contractor. Important directions will be confirmed in writing to the Contractor. Other directions will be so confirmed on written notice in each case.

D.5. FACILITIES AND SANITATION:

1. The necessary sanitary conveniences, properly secluded from public observation, shall be erected and maintained by the Contractor at all times while workmen are employed on the work, and the use of such sanitary conveniences shall be strictly enforced. Type and location of such conveniences shall be approved by the Engineer. The Contractor shall provide first-aid equipment and other facilities as are or may be required by the laws of the State, County, and City.

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**D.6. EMPLOYEES:**

1. The Contractor shall employ only competent, skillful workmen to do the work; and whenever any person shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, such person shall be removed from the work site immediately upon notification from the Engineer and shall not be employed on the work again, except by consent of the Engineer. The Contractor shall at all times enforce strict discipline and good order among his employees. The Contractor shall comply with all applicable labor rules, wage scales, and regulations, including nondiscriminatory laws, of the Government of the United States, State of Oregon, and City Of Woodburn.

**D.7. REQUIREMENTS OF OREGON LAW FOR PUBLIC CONTRACTS:**

1. TAXES, CONTRIBUTIONS TO INDUSTRIAL ACCIDENT FUND, LABOR, AND MATERIALS: The Contractor shall make payment promptly as due to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for herein, and shall pay all contributions or amounts due the State Industrial Accident Fund from the Contractor or subcontractors incurred in the performance of this Contract, and shall pay to the State Tax Commission all sums withheld from employees pursuant to ORS 316.711 and ORS 316.714, as amended.
2. PAYMENT OF CLAIMS BY THE OWNER: The Contractor shall permit no lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. In the event the Contractor shall fail, neglect, or refuse to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, whether said services and labor be performed for the Contractor or a sub-contractor, then, in such event, the proper officer or officers representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of his Contract in accordance with the provisions of ORS 279C.600 through 279C.625. The payment of a claim in the manner authorized herein shall not relieve the Contractor or his Surety from his or its obligation with respect to any unpaid claims.
3. OVER TIME: No person shall be employed more than 8-hours in any one day for 40-hours in any one week, except in cases of necessity, emergencies, or where the public policy absolutely requires it; in such cases, the laborer shall be paid at least time-and-one-half pay for all overtime in excess of 8-hours a day and for work performed on weekends and on legal holidays.
4. FORFEITURE OF CONTRACT: This Contract may be canceled at the election of the Owner for any willful failure or refusal to faithfully perform the Contract according to its terms in Article J(2) herein.
5. PAYMENT OF MEDICAL CARE: The Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care, or other needed care and attention incident to sickness or injury to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services, and all monies and sums which the Contractor:

- a. May or shall have deducted from the wages of his employees for such services pursuant to the terms of ORS 655.010, to ORS 665.160, and any Contract entered into pursuant thereto; or
- b. Collected or deducted from wages of his employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

6. PREVAILING WAGE RATES ON PUBLIC WORKS PROJECTS (BOLI):

- a. The Contractor shall comply fully with ORS 279C.800 through ORS 279C.870, which provides in part that "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". Contractor shall pay wages in accordance with the Prevailing Wages as printed in the latest pamphlet and as amended. Pamphlet may be download at the following website;

**[http://www.boli.state.or.us/BOLI/WHDPWR/pwr\\_state.shtml](http://www.boli.state.or.us/BOLI/WHDPWR/pwr_state.shtml)**

- b. The Contractor or his surety and every Subcontractor or his surety shall submit certified payroll covering work accomplished during the pay period. No payment(s) will be made by the City of Woodburn unless certified payroll forms are received.
- c. There is no representation on the part of the Owner that labor can be obtained at the hourly rates bound with the Construction 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 on account of the payment of wage in excess of those listed.
- d. Contracts in the amount of less then \$50,000.00 are not subject to BOLI Prevailing wage rates. They are subject to Oregon Minimum Wage rates, latest revision.

D.8. SAFETY PRECAUTIONS:

- 1. The Contractor shall take all necessary precautions for the safety of employees on the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the work is being performed. The Contractor shall, without further order, provide and maintain at all times during the progress or temporary suspension of work, suitable barricades, fences, signs, signal lights, and flagmen as are necessary or required to ensure the safety of the public and those engaged in the work. The work is to be so conducted that no liability will accrue under the Employer's Liability Act of the State of Oregon.

D.9. PROTECTION OF PROPERTY:

- 1. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property and the public and private property of others from injury or loss arising in connection with this Contract. He shall make good any such damage, injury, or loss, except as may be directly due to errors in the

Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property as provided by law and in the Contract Documents.

2. Structures, facilities or other property damaged due to work by the Contractor on this contract shall be replaced or repaired, to like new condition, to the satisfaction of the Engineer and at no additional cost to the Owner.
3. In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury; and he shall so act, without appeal if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined by agreement or arbitration.

D.10. MATERIALS AND APPLIANCES:

1. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary for the execution and completion of the work.
2. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. The Contractor shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining the same as requested by the Engineer. When required, the Contractor shall furnish certificates of tests of materials and equipment made at the point of manufacture by a recognized testing laboratory.

D.11. ACCESS FOR INSPECTION:

1. The Engineer and his representatives and authorized representatives of State and Federal agencies shall at all times have access to the work wherever it is in preparation or progress, and the Contractor shall provide facilities for such access and for inspection, including maintenance of temporary and permanent access routes.
2. If the specifications, the Engineer's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer timely notice of the date fixed for such inspection. Inspections by the Engineer will be promptly made, and where practical at the source of supply. If any work should be covered without approval or consent of the Engineer, it shall, if required by the Engineer, be uncovered for examination at the Contractor's expense.
3. Examination of concealed work may be ordered by the Engineer, and if so ordered, the Contractor shall uncover the work. If such work is found not in accordance with the Contract Documents, the Contractor shall correct the defective work at no additional cost to the Owner.

D.12. ROYALTIES AND PATENTS:

1. The Contractor shall pay for royalty and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss

when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the process or article specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Engineer or the Owner.

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**D.13. SUBMITTALS AND WORKING DRAWINGS:**

1. The Contractor shall (at his expense) submit three (3) full and bound sets of submittals. Submittals shall be shop or working drawings and/or catalog cuts of fabricated and manufactured items (including mechanical and electrical equipment), and materials required for the construction. After review, one full set will be retained by the Engineer and one returned to the Contractor. Individual submittals marked for resubmission can be transmitted individually but shall be submitted in a set of three (3) and will likewise be distributed.
2. Submittal material shall be presented in sufficient time to allow the Engineer not less than ten business days for examination and review of the submittals. No material, equipment and/or components shall be purchased, delivered or installed on the work until the Engineer has approved the submittal.
3. Submittals shall be accurate, distinct and complete, and shall contain all required information, including satisfactory identification of items, units, and assemblies in relation to the Plans and Specifications. If a brochure is used for submittal the Contractor shall clearly mark or highlight the intended item and include size, color, type to include all options available.
4. Submittals shall come to the Engineer through the Contractor only (not through his subcontractors or suppliers). The Contractor shall be responsible for reviewing submittals for content and clarity.
5. Incomplete or unchecked shop drawings will not be accepted, and shop drawings which, in the opinion of the Engineer, clearly indicate that they have not been checked by the Contractor will be considered as failing to comply with the intent of the Contract Documents and will be returned to the Contractor for resubmission in the proper form.
6. The approval of submittals by the Engineer shall not relieve the Contractor from responsibility for correctness of dimensions, fabrication details and space requirements unless the Contractor has called attention to such deviations, in writing, and the Engineer approves the change or deviations in writing.
7. When the Contractor calls deviations to the attention of the Engineer, the Contractor shall state in writing whether he claims a deduction or extra cost adjustment relating to the deviation(s).
8. Refer to Appendix A for a checklist of submittals required. Submittals for this specific project are shown highlighted or checked in the Appendix. This check list is intended to make submission and tracking easier. It is not necessarily a complete list. The Engineer may require submittals on additional items not on the list.

**ARTICLE – E**  
**PROGRESS OF THE WORK.**

E.1. PRECONSTRUCTION CONFERENCE:

1. When the Bid has been approved by the City Council and the Contract is signed by all parties, a preconstruction conference will be scheduled. The conference time will be made convenient to both the Engineer and the Contractor. The conference will take place at City Hall Annex (Public Works Building, 190 Garfield Street).
2. Contractor shall turn in any outstanding schedules, bonds, or other submittals required by the contract documents, at the time and place of the preconstruction conference or prior to that time.
3. The “Notice to Proceed” will be mailed to the contractor after discussion of schedule at the preconstruction conference and after the requirements cited in paragraph two, above, have been met.
4. It is expressly understood and agreed that the time of beginning, rate of progress, and time of completion of the work are of the essence in this Contract.

E.2. PROSECUTION OF THE WORK:

1. The work shall be prosecuted at such time and in or on such part or parts of the project as may be required, to complete the project as contemplated in the Contract Documents and the approved construction schedule. It is expressly understood and mutually agreed between all parties to the Contract that the Engineer shall not determine or be responsible for construction methods.
2. The Contractor shall perform the work and take such precautions as he may deem necessary to complete the project so all work will be in conformance with the Contract Documents within the Contract time.
3. If the Contractor desires to carry on work at night or outside the regular hours, he may submit application to the Engineer; but he shall allow ample time to enable satisfactory arrangements to be made for inspecting the work in progress. If granted permission, he shall provide light for the different parts of the work in a manner satisfactory to the Engineer and shall comply with all regulations of the City and State or other public body having jurisdiction.

E.3. SCHEDULES AND PROGRESS REPORTS:

1. Contractor shall furnish the Engineer schedules of expected progress of work under the Contract, showing approximately the dates on which each part or division of the work is expected to begin and finish. The progress schedules shall be submitted regularly and shall cover a time period satisfactory to the Engineer. The Contractor shall also forward to the Engineer, as soon as practicable after the first day of each month, a summary report of the progress of the various parts of the work under the Contract in the shops and in the field, stating the existing status, rate of progress, estimated time of completion, and cause of delay, if any.

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**E.4. ASSIGNMENT:**

1. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other; nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the Owner.

**E.5. OWNER'S RIGHT TO DO WORK:**

1. If the Contractor should, in the opinion of the Engineer, neglect to prosecute the work properly or should neglect or refuse at his own cost to take up and replace work as shall have been rejected by the Engineer, then the Owner shall notify the Surety Company of the condition and after ten (10) days written notice to the Contractor and the Surety Company, or without notice if an emergency or danger to the work or public exists, and without prejudice to any other right which the Owner may have under this Contract, take over that portion of the work which has been improperly executed and make good the deficiencies and deduct the cost thereof from the payments then or thereafter due the Contractor.

**E.6. STAKING OUT OF WORK:**

1. Engineer will set baseline and/or benchmark(s) for the construction of the improvements, wherever necessary in accordance with Article C(7). The Engineer will not be responsible for any elevation given other than those indicated herein.
2. The Contractor shall use more than one grade stake at all times to minimize any survey or layout errors.
3. The Contractor shall give the Engineer 72-hours notice of the time and place where baselines and/or a benchmark(s) will be needed. All stakes, marks, etc., shall be carefully preserved by the Contractor, and in cases of their careless or unnecessary destruction or removal by him or his employees, such stakes, marks, etc., shall be replaced by the Engineer at the Contractor's expense.

**E.7. PROCESS CONTROL:**

1. It is the intention of these Contract Documents that the progress of work shall precede in a systematic manner so that a minimum of inconvenience will result to the public in the course of construction. It is, therefore, necessary that the Contractor confine his operations to as small a length of work area per crew as is feasible.
2. Cleanup of all construction debris, excess excavation, excess materials, and complete restoration of all fences, mailboxes, ditches, culverts, signposts, and similar items shall be completed immediately following the completion of the project or any portion of the project.
3. All excavated materials shall be removed from grassed and planted areas, and these surfaces shall be left in a condition equivalent to their original condition and free from all rocks, gravel, boulders, or other foreign material.
4. It is the intent of these Contract Documents that the Contractor shall provide all labor and equipment necessary to grade and maintain in a reasonable condition all streets and roadways, on which construction has been accomplished until final acceptance of the entire project by the City.

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**E.8. EXISTING STRUCTURES AND UTILITIES:**

1. The Contractor shall exercise all possible caution to prevent damage to existing structures and utilities whether above or underground. An attempt has been made to show these structures and utilities on the Plans. While the information has been compiled from the best available sources, its completeness and accuracy cannot be guaranteed, and it is presented simply as a guide to possible difficulties. The Contractor shall notify all utility offices concerned at least 48 hours in advance of construction operations in which a utility's facilities may be involved. This shall include but not be limited to water, telephone, electric, gas, and television services. Mailboxes, if damaged during construction, shall be replaced at Contractors expense. Mail deliveries shall continue during construction as scheduled by U.S. Mail.
2. It shall be the responsibility of the Contractor to locate and expose all existing structures and utilities in advance of excavation. Any structures or utilities damaged by the work shall be repaired or replaced in a condition equal to or better than the conditions prior to the damage. Such repair or replacement shall be accomplished at the Contractor's expense without additional compensation from the City. The Contractor shall notify the City of any damaged underground structure or utility, and repairs or replacements shall be made before backfilling takes place.
3. If interfering power poles, telephone poles, guy wires, or anchors are encountered, the Contractor shall notify the Engineer at least seven (7) days in advance of construction to permit arrangements with the utility company for protection or relocation of the structure.
4. If the Contractor encounters existing structures which will prevent the construction of any portion of the project and which are not properly shown on the Plans, he shall notify the Engineer before continuing with the construction, in order that the Engineer may make such field revisions as necessary to avoid conflict with the existing structures. The cost of waiting or "down" time during such field revisions shall be borne by the Contractor without additional cost to the City. If the Contractor shall fail to so notify the Engineer when an existing structure is encountered, but shall proceed with the construction despite this interference, he shall do so at his own risk. In particular, when the location of the new construction, as shown on the Plans, prohibits the restoration of existing structures to their original conditions, the Contractor shall notify the Engineer so that field relocation may be made to avoid the conflict.
5. **ATTENTION: Oregon law requires the Contractor to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at 503.232.1987. Reference ORS 757.542.**

**E.9. RELOCATIONS:**

1. During the progress of construction, it is expected that minor relocations may be necessary. Such relocations shall be made only by direction from the Engineer. Unforeseen obstructions encountered as a result of such relocations will not be subject for claims for additional compensation by the Contractor to any greater extent than would have been the case had obstruction been encountered along the original location.

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**E.10. PUBLIC SAFETY AND CONVIENENCE:**

1. The Contractor shall comply with all rules and regulations of the City and State authorities regarding the closing of public streets or highways to the use of public traffic. No public road shall be closed by the Contractor, except by express permission of the Engineer and in accordance with City Ordinance. Traffic must be kept open on those roads and streets where no detour is possible. The Contractor shall, at all times, conduct his work so as to assure the least possible obstruction to traffic and normal commercial pursuits. All obstructions within traveled roadways shall be delineated by approved signs, barricades and lights where necessary or ordered by the Engineer for the safety of the traveling public. The convenience of the general public and residents along the project worksite, and the protection of persons and property are of prime importance and shall be provided for by the Contractor in an adequate and satisfactory manner.
2. The Contractor shall use every reasonable precaution to safeguard the persons and property of the traveling public. Failure of the Engineer to notify the Contractor to maintain barricades, barriers, lights, flares, danger signals, or watchmen shall not relieve the Contractor from his responsibility. All barricades and obstructions shall be protected at night by signal lights, which shall be suitably distributed across the roadway and kept burning sunset to sunrise. Barricades shall conform to the latest revision of MUTCD and as amended by the Oregon supplement.
3. Whenever the Contractor's operations create hazardous condition, he shall furnish flaggers and guards as necessary or as ordered by the Engineer to give adequate warning to the public of any dangerous conditions to be encountered. He shall furnish, erect and maintain approved fences, barricades, lights, signs, and any other devices that may be necessary to prevent accidents and to avoid damage and injury to the public. Flagmen and guards, while on duty and assigned to give warning to the public, shall be equipped with approved red wearing apparel and a red flag which shall be kept clean and in good repair. Signs, flags, lights, and other warning and safety devices shall meet the requirements of the current ODOT safety manual.
4. The Contractor will be required to confine construction operations within the dedicated rights-of-way for public thoroughfares unless he has made special arrangements with the affected property owners in advance. The Contractor will be required to protect stored materials, cultivated trees and crops, and other items located adjacent to the construction. Property owners affected by the construction shall be notified, in writing, by the Contractor at least 48-hours in advance of the time construction begins.
5. During all construction operations, the Contractor shall construct and maintain such facilities as may be required to provide access by all property owners to their property. No person shall be cut off from access to his residence or place of business for a period exceeding eight (8) hours, unless the Contractor has made special arrangements with the affected persons.
6. Before commencing any work, the Contractor shall provide the city the name(s) and telephone number(s) of person(s) responsible for correcting hazardous conditions during off work hours. In the event that the person(s) are not available or when notified do not satisfactorily correct the hazardous condition, the city may correct the hazardous condition and deduct from the Contractor's pay direct costs incurred, plus a 15% administration fee.

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**E.11. DELAYS AND EXTENSION OF TIME:**

1. If the Contractor be delayed at any time in the progress of the work by any act or neglect of the Owner or the Engineer, or of any employee of either; or by any separate contractor employed by the Owner; or by changes ordered in the work; or by strikes, lockouts, fire, unusual delays in transportation, unavoidable casualties or any causes beyond the Contractor's control which justified the delay; or by delay authorized in writing by the Engineer, then the date for completion of the work shall be extended. Within a reasonable period after the Contractor submits to the Engineer a written request for an extension of time, the Engineer will present his written recommendations to the Owner stating his opinions on whether or not the delay justified an extension of time; and, if so, the number of days extension due the Contractor. The Owner will make the final decision on all requests for extensions of time.
2. No such extensions shall be made for delay occurring more than seven (7) days before claim therefore is made in writing to the Engineer. In the case of a continuing cause of delay, only one claim is necessary.
3. This section does not exclude the recovery of damages for delay by either party under other provisions in these Contract Documents.

**E.12. OTHER CONTRACTS:**

1. The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.
2. If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for proper execution. His failure to so inspect and report shall constitute an acceptance of the work, except as to defects that may develop in the other Contractor's work after execution of his work.

**E.13. USE OF PREMISES:**

1. The Contractor shall confine his equipment, the storage of materials, and the operation of his workmen to limits shown on the Plans and indicated by law, ordinances, permits, or directions of the Engineer and shall not unreasonably encumber the premises with his materials. The Contractor shall provide, at his own expense, the necessary rights-of-way and access to the work that may be required outside the limits of the Owner's property.
2. The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

**E.14. USE OF COMPLETED PORTIONS:**

1. The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work of such portions may not have expired, but such taking possession and use shall not be deemed as acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of the work, or delays the

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completion of the work, the Contractor shall be entitled to extra compensation or an extension of time, or both. Should such condition or conditions prevail, the Contractor shall submit his claim for additional compensation or extension of time, in writing, to the Engineer. The Engineer will review the claim and present his recommendations to the Owner in writing. The Owner will make the final decision on the claim.

E.15. CUTTING, PATCHING AND OPEN OR EXPOSED WORK:

1. The Contractor shall do all cutting, fitting, or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied from the Plans. Any defective work or material performed or furnished by the Contractor that may be discovered by the Engineer shall be removed and replaced or patched, as the Engineer may direct, at the expense of the Contractor.
2. All underground work in the right of way shall be covered over on a daily basis for protection of persons and property. **Underground work in the area of paved surfaces shall be covered by steel plates, capable of supporting traffic loads, with hot or cold mix along all edges** to provide a non-abrupt edge or be backfilled with specified material and have hot or cold mix asphalt pavement placed for a temporary wearing surface overnight. Steel plates shall be maintained and shall not remain over 48-hours without written permission from the Engineer.

E.16. CLEANING UP:

1. The Contractor shall, at all times, at his own expense, and without further order, keep property on which work is in progress free from accumulations of waste material and rubbish caused by employees or by the work, and at all times during the construction period shall maintain structure sites, rights-of-way, adjacent property, and the surfaces of streets and roads on which work is being done in a safe condition for the Contractor's workers and the public and until the project has been signed off as complete. Reference Article E (10)(.1) and (.2).

E.17. SUBSTITUTION OF EQUAL OR ALTERNATE EQUIPMENT AND MATERIALS:

1. Where items of equipment and materials are specified by the name of a manufacturer for the purpose of establishing a standard of quality and acceptable experience, the Contractor shall base his bid upon the equipment and materials being supplied by the named manufacturer as meeting the specified requirements and experience qualifications.
2. Substitution of equipment and materials of makes other than those named in the specifications will be considered only if the equipment or materials proposed for substitution is equal or superior in construction and/or efficiency to that named in the specifications.
3. Requests for substitution must be accompanied by documentary proof of the difference in cost to the Contractor in the form of certified copies of the equipment or materials company's quotations covering the specified equipment or materials and also the equipment or materials proposed for substitution or other proof satisfactory to the Owner and Engineer. It is the intention that the Owner shall receive the full benefit of the saving in cost involved in any substitution as a reduction in the contract price. In all cases the burden of proof that the equipment or materials offered for substitution is

equal or superior in construction and/or efficiency to that named in the specifications shall rest on the Contractor.

E.18. TESTING:

1. Testing of materials utilized in construction and required in the technical specifications shall be accomplished by a certified lab or testing company to the minimum requirements as specified.
2. The city shall conduct testing at its discretion. The city shall oversee, direct and evaluate test results for compliance to the specifications. Re-testing required due to failing test will be borne by the Contractor, including all fees and expenses.

E.19. HOURS OF WORK:

1. Construction work and activity shall be limited to Monday through Friday from 7:00 AM to 7:00 PM, excluding legal holidays as defined in Article A(9)(3).
2. It may be permissible to accomplish work, outside the established weekdays, if requests are submitted by the Contractor and approved by the Engineer in advance. Work hours will remain limited to 7:00 AM to 7:00 PM daily.
3. Work outside of the established time limits that require overtime rates for inspection, surveying, testing and/or other outside professional services shall be reimbursed to the City by the Contractor at overtime billing rates unless negotiated otherwise between the Engineer and the Contractor.
4. Contractor shall request permission for overtime work at least 48-hours in advance of day and time for the expected work to take place.

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**ARTICLE – F**  
**CHANGES IN WORK**

F.1. UNFORESEEN DIFFICULTIES:

1. The Contractor shall protect his work and materials from damage due to the nature of work, the elements, carelessness of other contractors, vandalism or from any cause what-so-ever until the completion and acceptance of the work. All loss or damages arising out of the nature of the work to be done under these Contract Documents, or from any unseen obstruction or defects which may be encountered in the prosecution of the work, or from the action of the elements, shall be sustained by the Contractor.
2. If differing site conditions are encountered and Contractor has notified Engineer in writing, the following procedure shall apply:
  - a. Engineer shall promptly investigate the conditions. If he finds that conditions are as described in the Contractor's written notice, and that those differing conditions would cause a substantial change in the Contractor's cost or time to complete the work, the Engineer shall recommend an appropriate adjustment to either the Contract price, the time for completion, or both. The Owner shall make final determination of any adjustments to price or time. The Engineer's recommendation shall not be binding on the Owner.
  - b. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required herein: provided, however, the time prescribed for notification may be extended by the Engineer.
  - c. No claim by the Contractor for an adjustment to the Contract shall be allowed if asserted after payment for the affected work has been made.
  - d. The Contractor shall not be relieved from his obligation to resume construction operations on the site pending a decision on the validity of any claim, or pending the execution of a negotiated agreement to cover additional cost recognized under the provisions of this Section, unless permitted otherwise by the Engineer.
  - e. If an agreement cannot be reached under this Subsection, the Contractor may proceed with a claim under Subsection 3.3.
  - f. If the Contractor proceeds with his performance without following the requirements herein it shall constitute acceptance by the Contractor of the condition encountered and shall waive any right for a subsequent modification to the Contract.

F.2. EXTRA WORK:

1. GENERAL: Extra work is any form or amount of work not specifically detailed in the Documents or is beyond the quantities identified in the Proposal. Extra work is one of two types; work which is of the nature that is in the Contract and work that is not in the scope of the Contract. Upon written order (Extra Work Directive) from the Engineer the Contractor shall perform extra work. If that work is in the nature of the Contract it shall be conducted and paid at established unit prices per the Contract. If it is not in the scope of the Contract it shall be carried out at prices agreed upon between the parties

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of the Contract. If prices cannot be agreed upon the extra work shall be paid for as force account work.

2. **FORCE ACCOUNT BASIS:** Contractor shall provide an itemized, estimated cost of the related work. Included shall be unit costs for all labor, equipment, materials and special services for the work and any by subcontractors that are expected to accomplish force account work. All itemized costs must be agreed to in writing prior to beginning of the work.
- a. Records shall be maintained in a manner as to provide a clear distinction between direct cost of extra work and costs of other operations performed in connection with the Contract.
  - b. Furnish to the Engineer signed daily reports of extra work to be paid for on a force account basis. Itemize materials used and set forth, the direct cost of labor and charges for equipment rental, whether furnished by Contractor, or Subcontractor. Provide names, identifications, and classifications of workers, the hourly rate of pay and hours worked, and the size, type, and identification number of equipment and hours of equipment operation.
  - c. Substantiate material charges by vendors' invoices, submit such invoices with the reports; or, if not available, submit with subsequent reports. In the event said vendors' invoices are not submitted within 15 days after acceptance of the work, Owner reserves the right to establish the cost of such materials at the lowest current price at which said materials are available in the quantities concerned, delivered to the location of the work.
  - d. Contractor shall submit in the form of a request for a change order his request for payment of all force account work upon completion of the work and shall further include all back up data requested by the engineer.
  - e. When force account work is ordered by the Engineer, it will be paid for in the following manner;

**LABOR** - All labor, including foremen, equipment operators, laborers and all specialists will be paid two (2) times labor rate as listed in the BOLI schedule provided herein for the class of labor used in Forced Account work. This rate shall be full compensation for wages, fringe, benefits, insurance, taxes, and subsistence.

**MATERIALS** - For all materials actually used in the work, in accordance with the instructions of the Engineer, except such as are to be furnished and paid for under rental rates applicable in connection with the use of equipment as hereinafter provided. The Contractor shall be paid the actual cost thereof to the purchaser, whether Contractor, Subcontractor or other forces, from the supplier thereof, including transportation costs to the job site; subject to the following conditions: If a cash or trade discount is offered or is available to the purchaser, it shall be credited to the Owner notwithstanding the fact that such discount may not have been taken. If materials are procured other than by direct purchase from and direct billing by the supplier, the cost thereof shall be deemed to be the price paid to the actual supplier, less discounts, as determined by the Engineer. No markup other than actual handling costs will be permitted. If materials are obtained from a supply or source wholly or partly

owned by the purchaser, the cost thereof shall not exceed the price paid by the purchaser for similar materials furnished from the same source on Contract items, or the current wholesale price for such materials delivered to the job site, whichever is lower. If the cost of materials is determined by the Engineer to be excessive, then the cost of such materials shall be deemed to be the lowest current wholesale price at which such materials are available in the quantities concerned, delivered at the job site, less any discounts offered or available.

EQUIPMENT - For the use of equipment, the Contractor will be paid in accordance with the lowest available rental rates in the City of Woodburn, OR with the additional percentage allowances as listed herein. A current copy of the official published document covering rental equipment is on file at each Region Office of ODOT and is also on file at pertinent area offices of the Associated General Contractors of America. Copies of the current publication may be obtained on request from the Oregon Department of Transportation, State Highway Building, Salem, Oregon 97310. Hand tools and appliances with a market value of \$1,000.00 or less shall not be reimbursable and shall be considered incidental to the work.

SPECIAL SERVICE - Under agreement by the Engineer and Contractor, it may be determined that a certain item or service under force account work cannot be satisfactorily performed by the forces of the Contractor nor his Subcontractors in which case such item or service may be performed by specialist. Invoices for such item or service on the basis of the current market price thereof may be accepted without complete itemization of labor, material, and equipment cost when such itemization is impracticable or not customary under the circumstances. Where the force account work necessitates fabrication or machining work by the Contractor away from the job site, charges for such work may, by agreement, be accepted as a specialist billing. The specialist(s) invoices shall credit for cash or trade discounts offered or available the same as applies to other force account work but shall not include percentage or other markup to cover the Contractor's overhead charge or profit.

PERCENTAGE ALLOWANCES - To the actual costs enumerated and limited above, amounts equal to a percentage of such costs will be allowed and paid to the Contractor. These percentages will be as follows;

Under Labor . . . . .	2 times BOLI PWR per Hr.
Under Materials. . . . .	15 percent
Under Equipment. . . . .	15 percent
Under Special Services. . . . .	15 percent

The percentage allowances made to the Contractor in accordance with the terms outlined above will be understood to be reimbursement and compensation for all superintendence, use of tools and small equipment, overhead expense, bond cost, insurance premiums, profits, indirect costs and losses of all kinds, and all other items of cost not specifically designated herein as items for which involved are furnished or incurred by the Contractor, by the Subcontractor or by other forces. No other reimbursement, compensation, or payment will be made for any such services, costs, or other items.

Should the Contractor make any percentage allowance or other corresponding allowance to a Subcontractor or to others, in connection with Force Account

work, such allowances shall be at the sole expense of the Contractor and the Contractor will not be reimbursed or otherwise compensated for the same by the Owner.

F.3. DISPUTED WORK:

1. If the Contractor considers any work demanded of him to be outside the scope of the Contract or considers any ruling by the Engineer to be contrary to the meaning of the Contract, the Contractor shall, nevertheless, proceed without delay to perform the work as directed, without affecting his right to claim compensation for any Extra Work or expense in the event the Engineer's direction is found to be erroneous; provided such right shall be contingent upon the Contractor's adherence to the procedure herein referenced.
2. In the event that Contractor has followed procedure as outlined and believes the decisions and/or requirements of the Engineer to be beyond the scope of work and/or erroneous, Contractor shall make a written appeal to the Director of Public Works, City of Woodburn, OR as prescribed herein.
3. The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized in sufficient detail to permit an analysis of all material, labor, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added, or changed.
4. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the Proposal included a time extension, a written justification shall also be furnished. The Proposal, together with the price breakdown and time extension justification, shall be furnished within five working days, of the Engineer's ruling, to the Director of Public Works, City of Woodburn, OR.

F.4. AS-BUILT PLANS:

1. The Contractor shall maintain a current set of As-Built plans showing all field construction changes that deviate from the plans and documents. Progress and final payments may be withheld until a current set of As-Built plans are up to date or completed. As-Built plans shall be the property of the city upon completion of the project.

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**ARTICLE – G**  
**BIDDING, AWARD, PAYMENTS AND CLOSEOUT**

G.1. BID PROCESS:

2. Basis for obtaining Documents, preparation, prequalification, submission of Bids as well as reception and opening of Bids shall be as specified in the Instructions to Bidders contained herein.
2. The Bid Bond shall be executed as specified in these General Conditions per Article I(4).

G.2. BID AWARD:

1. The Contract Review Board (CRB) operates as the final authority for the Owner in all matters of Public Works Contracts. The CRB, under the OAR Model Rules can approve sole sourcing, approve, award, reject any and all bids or portions thereof on proposals offered.
  2. Bid award shall be made, by the Owner, to the bidder submitting the lowest acceptable proposal.
  3. In determining the lowest acceptable bid, the Owner may take into account, among other factors, the following;
    - a. Bid prices including discounts
    - b. The time of completion or delivery proposed between otherwise equal bids.
    - c. The relative merits and performance of any item specifically proposed by a bidder.
    - d. Any variation in maintenance and warranty period specifically proposed by the bidder in excess of the minimums specified.
    - e. The realistic balance of prices in the proposal for various units of work.
    - f. The experience, qualifications and ability of a bidder to perform the work.
  4. The Owner reserves the right to waive informalities or irregularities in a proposal. Determination of the lowest acceptable bidder and award may be subject to review and determination by the Contract Review Board as to legal sufficiency of any proposal submitted.
  5. Award of the Contract or rejection of all bids or portions thereof will be made by the Owner within 45-days. The Bidder will be notified in a written Notice of Award mailed to the address supplied in the proposal.
  6. The Bidder who is awarded the Contract shall within ten workdays from the dated Notice of Award deliver to the Owner a fully signed Agreement along with required insurance certificates, a performance bond and a labor & materials bond. The Owner will execute and return a signed agreement contract with ten workdays of receipt of the package.
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7. Failure on the part of the Bidder to execute the Contract in accordance with these directions will be just cause for cancellation of the award and forfeiture of the bid bond. The forfeited bond shall become the property of the Owner as liquidation of damages sustained by the breach of the Contract by the Bidder. The Owner then may award the Contract to the next lowest acceptable Bidder, re-advertise the work, or take such other course of action the Owner deems expedient.
8. After Items one (1) through seven (7), above, have been completed and approved by the Owner the Engineer will issue a Notice to Proceed to the Contractor. Date of the Notice to proceed will begin the time limits for which the construction is to be completed. No work shall begin on the project sight until Notice to Proceed has been received by the Contractor.

### G.3. MEASUREMENTS:

1. GENERAL: Measurements will be in accordance with 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 practices. Computer generated or electronic digital measuring computing devices may be employed.
2. LINEAR: Measurement of pay lengths will be by the linear foot, measured along the line and grade of the item as actually placed and accepted as well as by the cross section. Quantities will be tabulated to the nearest 0.1-foot.
3. AREA: Areas will be measured on the surface of the item and may be expressed in square feet, square yards or acres as is appropriate for the particular item. Quantities will be tabulated to the nearest 0.1-SF, SY, or AC.
4. VOLUME: Volume of earthwork, particularly excavation and embankment will be computed by the average end area method or by other means of equivalent accuracy. Volumes of aggregate and concrete will be measured off neat lines as shown on plans or as changed by order of the engineer. Haul tickets in terms of volumetric measurement may be approved prior to delivery by the Engineer at his discretion. Quantities will be tabulated to the nearest 0.1-cubic yard.
5. WEIGHT: Measurement for materials on a weight basis shall be determined by weighing the material on certified weigh scales. The scales shall be licensed by the Oregon Department of Agriculture. The Contractor shall be responsible for maintaining the scales in accurate condition and be able to provide a current certification if requested by the Engineer. The Contractor shall provide a new certification, at his cost, to the Engineer if a question of accuracy develops. Quantities will be tabulated to the nearest 0.1-pound or ton.
6. 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 the computations based on the details and dimensions show on the plans will equal the estimated quantities. If no changes are made to the work, no

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allowance will be made in the event the quantities based on the Contractor's computations overrun or under run the estimated quantities.

G.4 PAYMENT FOR WORK:

1. GENERAL: In consideration of the faithful performance of all the covenants, stipulations, and agreements in this Contract to be kept and performed by the Contractor, the Owner covenants and agrees to pay the Contractor the amount bid, as adjusted when so stipulated, in the Contractor's Proposal, on the basis of the unit prices named in the Contractor's Proposal for the work actually performed as determined by the final estimate of the Engineer, together with any amounts due for change orders and extra work not classified under the items listed in the Contractor's Proposal as provided in Article F(2) of these General Conditions; less any deduction for failure to complete the work within the time specified; and less any deductions for claims and damages paid by the Owner due to actions or omissions of the Contractor and for which he is liable under this Contract.
2. PROGRESS PAYMENTS: So long as the work herein contracted for is prosecuted in accordance with the provisions of this Contract, the Engineer will, on the last two (2) days of each calendar month, make an approximate estimate of the proportionate value of the work done and of material furnished or delivered upon the Owner's property at the worksite up to that date. If the Contract price is determined on a unit price basis, this progress payment will be made on the basis of these unit prices for all work completed to date. If the Contract price is determined on a lump sum basis, this payment will be made on the basis of the percentage of the completed work to date. The amount of said estimate, after deducting five percent (5%) retainage and all previous payments, shall be due and payable to the Contractor not more than fifteen (15) days after the last day of said month. The five percent (5%) deducted, as above set forth, shall be withheld by the Owner to insure faithful completion of the work under the terms of the Contract Documents and to provide a fund for the payment of any claims that may accrue against the Owner due to any act or omission on the Contractor.
  - a. All estimated quantities of work for progress payments that have been made are subject to review and correction on the final estimate.
  - b. Progress payments, based on periodic estimates for quantities of work performed shall not, in any way, constitute acceptance of that work.
  - c. Furthermore, no payment will be made to the Contractor until he files with the Owner the signed Wage Certification Form certifying that he has paid not less than the prevailing rate of wages as required by ORS 279.354.
3. RETAINAGE: The amount to be retained will equal five (5) percent of the value of the completed work on the date the engineer makes a review for a progress payment. In accordance with the provisions of ORS 279C.550 through 279C.570, upon written request by the Contractor, the Owner will deposit the amounts withheld as retainage in an interest bearing account in a bank, savings bank, trust company, or savings association for the benefit of the Owner. Interest shall accrue to the Contractor. If the Owner incurs additional costs as a result of the exercise of any of the options for retainage, the Owner may recover such costs from the contractor by reduction of the final payment. As the work progresses, the Owner shall, upon written request, inform the Contractor of all accrued costs to date.

4. ADVANCES ON MATERIALS: Monthly progress payments may include compensation for materials received on the site during the pay period but not incorporated in the work, providing they are properly stored and protected and the Contractor submits to the Engineer, in writing, seven (7) days prior to the end of each pay period, a list, with costs supported by invoices from suppliers for such materials on the job for which the Contractor feels credit is due. Payments for material delivered to the site and not incorporated in the work during the pay period shall be understood to be advance payments for the Contractor's convenience. Final payment will be made only for materials actually incorporated in the work. Upon acceptance of the work, all materials stored on the site for which advance payments have been made, unless otherwise agreed upon in writing, shall revert to the Contractor and all remaining advance payments on materials shall be deducted from the final payment for the work. Advance payments by the Owner for materials on the site, but not incorporated in the work, shall not be considered as acceptance by the Owner and shall not relieve the Contractor from his responsibilities.
5. DEFERMENT OF PAYMENTS: In the event a complaint or charge of unlawful employment practices pursuant to the provisions of ORS 659 or claim of unpaid labor and or materials has been filed under ORS 279.526 and 279.528 with the Commissioner of Labor and the Commissioner issues a cease and desist order, no further payments will be made until all the provisions of the cease and desist order have been complied with by the Contractor.
6. FINAL PAYMENT: Upon completion of the work, the Contractor shall notify the Engineer in writing that he has completed his part of the Contract and shall request final payment. When the work has been completed to the satisfaction of the Engineer, he shall submit a certificate of acceptance of the completed work, together with a final estimate of the amount due the Contractor under this Contract, less any amount to be withheld by the Owner to ensure guarantees as may be stipulated. Upon approval of this final estimate by the Owner, and when applicable, the receipt by the Owner of the signed affidavit or release required under Article G(7) of these General Conditions, the Owner shall pay to the Contractor all monies remaining due him under the provisions of these Contract Documents. Furthermore, final payment will not be made to the Contractor until he files with the Owner the signed Wage Certification Form certifying that he has paid not less than the prevailing rate of wages as required by ORS 279.354, and also has submitted the required Maintenance Bond as specified in the Instructions to Bidders and As-Built plans (Article F3).

#### G.5. LIQUIDATED DAMAGES:

1. Should the Contractor fail to complete the work, or any part thereof, in the time agreed upon in the Contract or within such extra time as may have been allowed for delays by extensions granted as provided in the Contract, the Contractor shall reimburse the Owner for the additional expense and damage for every day that the Contract remains uncompleted after the date of completion given in the Contract. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the work is the per diem rate stipulated in the Contract. The said amounts are hereby agreed upon as liquidated damages for the loss to the Owner on account of expense due to the employment of engineers, inspectors, and other employees after the expiration of the time for completion, and an account of the value of the operation of the works dependent thereon. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which

have accrued against the Contractor; and the Owner is authorized to deduct the amount of such damages from any monies due the Contractor for work performed or material furnished under this Contract; and the Contractor and his sureties shall be liable for any excess.

2. Because the Owner finds it impractical to calculate the actual cost of delays, it has adopted the following formula to calculate liquidated damages for failure to complete the physical work of a contract on time.

LIQUIDATED DAMAGES FORMULA

$$LD = \frac{0.15 C}{T}$$

Where: LD = Liquidated Damages per calendar day  
(rounded to nearest \$)

C = Original Contract Bid Amount

T = Original No. Days for completion

3. In no case shall be the daily, liquidated damage amount to less then \$150 per calendar day.

G.6. CORRECTION OF DEFECTIVE WORK AFTER FINAL ACCEPTANCE:

1. All work, including the design of mechanical and electrical components of equipment and/or design of packaged control systems, which are furnished as a component of equipment, shall be guaranteed for a period of one (1) year against defects in materials and workmanship. The Contractor hereby agrees to make, at his own expense, any repairs or replacement necessitated by defects in materials or workmanship supplied by him that become evident within one (1) year after the date of the written notice from the Engineer recommending final acceptance of the entire project, or entire schedule, by the Owner. The Contractor also agrees to hold the Owner harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders from the Owner. If the Contractor fails to make the repairs and replacements promptly, the Owner may do the work, and the Contractor and his surety shall be liable for the cost thereof.

G.7. RELEASE OF LIENS:

1. Neither the final payment nor any part of the retained percentage shall become due until the Contractor submits to the Owner a signed affidavit, satisfactory to the Owner stating that so far as he (the Contractor) has knowledge or information, all accounts for materials, labor, and incidentals in connection with the work have been paid in full. The form of affidavit shall be satisfactory to the Owner. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney and/or administrative fees.

G.8. PROJECT CLOSEOUT SEQUENCE:

1. CONTRACTOR'S NOTIFICATION: When the Contractor determines he is substantially complete with the construction of the project and has cleaned the site of all debris he shall notify the Engineer in writing to that effect and request a Final Inspection.
2. FINAL INSPECTION: Upon receipt of the Contractor's notification of completion the Engineer will schedule with the Contractor a date and time to look over the whole site including any start-up testing required. The Engineer will give a written punch list of items to be replaced, fixed and or attended before final payment will be authorized.
3. CERTIFICATION OF COMPLETION: Once punch list items have been completed the Contractor shall file with the Engineer a certification of completion letter which will include a final pay request spreadsheet, a one year maintenance bond, a release of liens affidavit and any outstanding wage certifications.
4. ACCPTANCE OF THE PROJECT: When the Engineer approves the final pay request including retainage, the project will be deemed complete. At that point the Engineer will inform the Contractor in writing.

G.9. GUARANTEE:

1. The Contractor shall guarantee all products, materials, workmanship, labor and appurtenances included in the construction of the facilities are as designed in the original documents and as modified by all change orders incorporated in the Contract. The guarantee shall extend for a period of one-year measured from the date of the letter of final acceptance outlined in Article G(8)(4).

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**ARTICLE – H**  
**MISCELLANEOUS PROVISIONS**

H.1. TEMPORARY WATER:

1. The Contractor shall make his own arrangements for obtaining water under pressure for the construction and pay all costs. Temporary facilities shall be removed at the completion of the work.

H.2. TEMPORARY ELECTRIC POWER:

1. The Contractor shall make his own arrangements for obtaining temporary electric power during the construction period. He shall pay all costs for the same and remove all temporary wiring and facilities at the completion of the job.

H.3. SUBSURFACE CONDITIONS:

1. Information, which may be available from the Engineer regarding subsurface conditions and groundwater elevations, is offered as supplementary information only. Neither the Engineer nor the Owner 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 as is stated in Article B.4. herein.**
2. Logs of test holes, test pits, soils reports, groundwater levels, and other supplementary subsurface information are offered as available information of underlying materials and conditions at the locations actually tested.

H.4. PROTECTION OF THE ENVIRONMENT:

1. GENERAL: Any unforeseen work relating to the prevention of environmental pollution or the preservation of natural resources shall be considered extra work.
2. WATER: The contractor shall conduct the work in accordance with local laws and ordinances, with the applicable sections of ORS 468B with all regulations of the Department of Environmental Quality and other agencies of the state, and with all laws and regulations of the Federal government. All practicable means shall be exercised to prevent, control and abate the pollution of waters.
3. AIR: 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 in accord with the policy and purpose set forth in ORS 468A.
4. DUST CONTROL: The contractor shall abate dust nuisance by cleaning up, sweeping, sprinkling with water, or other means as necessary to accomplish the suppression of dust.
  - a. In residential, commercial and/or industrial work areas the contractor shall ensure dust is eliminated or plan for clean up of affected buildings of dust nuisance.
  - b. Pre-wet streets prior to sweeping to control dust.

- c. Sprinkle work sites adjacent to inhabited areas as needed to ensure dust elimination.

5. EROSION AND SEDIMENT CONTROL:

- a. The Contractor shall conduct the work in conformity to all applicable laws and regulations governing erosion and sedimentation control, the Engineers erosion and sedimentation control plan, the technical specifications in Section 3900 as well as all other regulating Agencies.
- b. The Contractor shall reduce the amount of sediment and other pollutants reaching the public storm system, which may result from work on the project site. The Contractor shall provide proper and approved temporary and/or permanent measures for all construction projects to lessen adverse effects on the environment.
- c. It is the Owners goal to apply erosion prevention measures to protect from rain, wind, in order to lessen the impact to the environment caused by construction prior to the need for remedial measures.

H.5. SHORING, SHEETING AND BRACING OF PITS AND TRENCHES:

- 1. All sheeting, shoring and piling support is subject to conform to the Oregon Occupational Safety and Health Code – Oregon Administrative Rules as enforced by OR-OSHA latest revised rules.
- 2. All trenches and excavations shall be adequately shored to prevent caving of the vertical sidewalls and to protect adjacent structures, utilities, property, workers and the public.
- 3. Unless specifically itemized in the Bid Proposal all shoring (et al) shall be considered incidental to the construction.

H.6. DEWATERING:

- 1. Discharge into any City storm and/or sanitary sewer is under the authority of the City's Sewer Use Ordinance No. 2176.
- 2. Dewatering discharge locations shall be shown on the drawings.

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**ARTICLE – I**  
**INSURANCE AND TAXES**

I.1. INSURANCE:

1. WORKMAN'S COMPENSATION: The Contractor shall maintain, during the life of this Contract, Workers' Compensation Insurance for all his employees employed on this work, and he shall require any subcontractors to provide similar insurance for all said subcontractor's employees, unless said subcontractor's employees are covered by the insurance maintained by the Contractor.
2. PUBLIC LIABILITY AND PROPERTY DAMAGE: The Contractor shall maintain Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage; contractual liability coverage for the indemnity provided under this agreement, and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000.00. Each annual aggregate limit shall not be less than \$2,000,000.00. The liability coverage required for performance of the agreement shall include the City Of Woodburn and its employees and officers, as additional insured but only with respect to the Contractor's activities to be performed under this agreement. Before this agreement is executed, the Contractor shall furnish to the Owner a certificate of insurance for the limits set out above, which is to be in force and applicable to the project. The insurance coverage shall not be amended, modified, or canceled insofar as the coverage contemplated herein is concerned without at least thirty days prior notice to the Owner.

I.2. INDEMNITY:

1. The Contractor shall indemnify and save harmless the Owner from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description made, brought, or recovered against the Owner by reason of any act or omission of the Contractor, his agents or employees, in the execution of the work or in guarding the same.

I.3. TAXES AND CHARGES:

1. The Contractor agrees to withhold and pay any and all withholding taxes, whether State or Federal and to pay all Social Security charges and also all contributions on amounts due to the State Unemployment Trust Fund, and to pay or cause to be withheld, as the case may be and all taxes, charges, or fees or sums whatsoever which are now or may hereafter be required to be paid or withheld under any laws.

I.4. BONDS:

1. PERFORMANCE BOND: The successful Bidder shall file with the City of Woodburn, Oregon, at the time of execution of the Contract, a Performance Bond in the amount 100-percent of the Contract price. The surety company furnishing this bond shall have a sound financial standing and a record of service satisfactory to the City of Woodburn, Oregon, and shall be authorized to do business in the State of Oregon.

The Attorney-in-Fact (Resident Agent) who executes this Performance Bond on behalf of the surety company must attach a copy of this power-of-attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond that it covers.

2. LABOR AND MATERIALS BOND: The successful Bidder shall file with the City a Labor and Materials Bond in the amount of 100-percent of the Contract price, as security for payment of the Contractor's subcontractors and suppliers. The surety furnishing this bond shall have a sound financial standing and a record of service satisfactory to the City and shall be authorized to do business in the State of Oregon. The Labor and Materials Bond shall be delivered to the City Engineer before the Notice to Proceed will be issued.
  
3. MAINTENANCE BOND: The successful Bidder shall file with the City a Maintenance Bond in the amount of 10-percent of the modified contract price (as amended by deletions and change orders), as security for one year after receipt of the Notice of Acceptance to ensure protection from faulty equipment and workmanship. The Performance Bond may proxy for the Maintenance Bond if it includes a statement that "Performance Bond shall cover replacement costs of defective work and products for a period of one year after dated Notice of Acceptance".

The surety furnishing this bond shall have a sound financial standing and a record of service satisfactory to the City and shall be authorized to do business in the State of Oregon.

The Maintenance Bond shall be delivered to the City Engineer before final payment will be issued.

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**ARTICLE – J**  
**TERMINATION OF CONTRACT**

J.1. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT:

1. If the work should be stopped under an order of any court or other public authority for a period of 3-months, through no act or fault of the Contractor or of anyone employed by him; or if the Engineer should fail to issue any estimate for payment within 15-days after it is due; or if the Owner should fail to pay the Contractor within 30-days after the time specified in these General Conditions any sum certified by the Engineer, then the Contractor may, upon 15- days written notice to the Owner and the Engineer, stop work or terminate this Contract and recover from the Owner payment for all work executed and any loss sustained upon any plant or material and reasonable profit and damages, unless said default has been remedied within said time.

J.2. OWNER'S RIGHT TO TERMINATE CONTRACT:

1. If the Contractor should be adjudged a bankrupt; or if he should make a general assignment for the benefit of his creditors; or if a receiver should be appointed on account of his insolvency; or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials; or if he should fail to make prompt payment to subcontractors, or for materials or labor; or persistently disregard laws, ordinances, or the instructions of the Engineer; or otherwise be guilty of a substantial violation of any provision of the Contract or any laws or ordinance, then the Owner, upon the certification of the Engineer that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor and Surety seven (7) days written notice, transfer the employment for said work from the Contractor to the Surety.
2. Upon receipt of such notice, such Surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the work included under this Contract and employ, by contract or otherwise, any person or persons to finish the work and provide the materials therefore without termination of the continuing full force and effect of this Contract. In case of such transfer of employment to such Surety, the Surety shall be paid in its own name on estimates according to the terms hereof without any right of the Contractor to make any claim for the same or any part thereof.
3. In lieu of the foregoing, if the Owner so elects, he may terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the expense of completing the Contract, including compensation for additional managerial and administrative services, shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner, as herein provided, and the Engineer shall certify damage incurred through the Contractor's default.

**END OF GENERAL CONDITIONS**

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