



GENERAL CONDITIONS

101 DEFINITION AND ABBREVIATIONS

101.1.00 DEFINITIONS

Whenever the following terms are used in these Standard Specifications, the Agreement, the Supplemental Specifications, Special Provisions, on the Plans, and in any other Contract Documents or other instruments pertaining to construction where these specifications govern, the intent and meaning shall be interpreted as follows, applicable to both the singular and plural thereof.

Addendum - A written or graphic modification to any of the Contract Documents issued before the opening of bids, which revises, adds to, or deletes information in the Solicitation Documents or previously issued Addenda.

Additional Work – Increased quantities of any Pay Item, within the scope of the Contract, for which a unit price has been established.

Advertisement – The public announcement inviting bids or quotes for work to be performed and materials to be furnished.

Agency – The city, county, state, special district, or political subdivision, as applicable, which has entered into an Agreement with the Contractor.

Aggregate – Rock product of a specified quality and gradation.

Agreement - The written contract between Owner and Contractor, signed and executed by both parties, describing the work to be performed and compensation to be paid and other Contract Documents that are attached to the Agreement.

Attorney in Fact – An Entity, or person, appointed by another to act in its place, either for some particular purpose, or for the transaction of business in general.

As Approved – A phrase understood to mean reviewed and accepted by the City Engineer or his authorized representative.

Base – A course or layer of specified aggregate material of specified thickness placed below the pavement course.

Bid – A competitive offer submitted in response to an Invitation to Bid or solicitation of a price to supply materials or services.

Bid Bond – The Surety bond for a Bid guarantee.

Bid Closing – The date and time, specified in the advertisement or Addenda, after which Bids, Bid modifications, and Bid withdrawals will no longer be accepted.

Bidder – An Entity, person, firm, partnership, or corporation submitting a formal proposal on a project.

Bid Security - A certified check, cashier's check, or surety bond, required to be submitted with the Proposal, to guarantee execution of the Agreement.

Bid Schedule – The list of Pay Items, their units of measurement, and estimated quantities in the Proposal Documents.

Boulders – Particles of rock too large to pass a 12-inch square opening.

Calendar Day – Any day shown on the calendar, beginning and ending at midnight.

Change Order - A written order issued by the Engineer or Owner to the Contractor, and signed by an authorized agent of the City of Sisters, modifying Work required by the

Contract and, if applicable, establishing the basis of payment for the modified work, or an adjustment in the Contract Price or the Contract Time issued after execution of the Agreement.

City - The City of Sisters, including its duly authorized representatives.

City Council - The duly elected City Council of the City of Sisters.

City Engineer - See Engineer.

Contract - See Agreement.

Contract Amount (Contract Price)– Total sum of the Contract Pay Items calculated by multiplying the Pay Item quantities by the unit prices in the Schedule of Items, and including all Extra Work authorized by Change Orders.

Contract Documents – Solicitation Documents, Proposal, Agreement, General Conditions, Supplemental Conditions, Specifications, and Drawings, including all modifications thereof incorporated into the Documents before their execution, and including all Change Orders, written orders and authorizations issued by the Agency, Permits, orders, and authorizations obtained by the Contractor applicable to the Project, and all other documents and requirements incorporated by specific reference thereto.

Contract Item (Pay Item) - A specific unit of work for which a price is provided in the proposal.

Contractor - The entity, person or persons, partnership, corporation, or joint venture, who has entered into an agreement with the City as party or parties of the second part, or her/his or their legal representatives. The word "Contractor" shall be taken to mean the Contractor, her/his agents, employees, officials, subcontractors, or anyone connected with the work herein set forth on behalf of the Contractor.

Contract Time - The amount of time allowed to complete the Work under the Contract, counted as the number of calendar or work days stated in the Contract Documents, and including authorized time extensions, starting from the date of the Notice to Proceed. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar days, the contract shall be completed by that date.

Developer - A private entity, person, partnership or corporation, who has expressed the intention of providing, or who has undertaken to provide, a facility, structure, or like public improvement project to be accepted for maintenance and ownership by the City.

Design Engineer - A private engineering firm retained by the City, Developer, or Owner to provide design, construction management, or some other service necessary for the construction of the proposed public facility.

Drawings - See Plans.

Engineer – The term "Engineer" shall signify the "City Engineer or his/her authorized representative".

Entity – A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

Equipment - All machinery, tools, manufactured products, and fabricated items, together with the necessary supplies for upkeep and maintenance, and all apparatus necessary for the proper construction and acceptable completion of the work, or specified for incorporation into the Work.

Establishment Period – The time specified to assure satisfactory establishment and growth of planted materials.

Extra Work – Work not included in the Contract, but deemed by the Engineer to be necessary to complete the Project.

Final Acceptance – Written confirmation by the City that the Project has been completed in accordance with the Contract, with the exception of latent defects and Warranty obligations, if any, and has been accepted for maintenance by the City.

Final Inspection – The inspection conducted by the Engineer to determine that the Project has been completed in accordance with the Contract.

Incidental – A term identifying those acts, services, transactions, property, or other items for which the City will make no separate or additional payment.

Inspector – The representative of the City Engineer authorized to inspect and report on Contract performance, and assigned to witness and verify tests of the work and the materials furnished or being furnished by the City of Sisters.

Intention of Terms - Whenever, in these specifications or on the plans, the words "require", "permitted", "ordered", "designated", "prescribed" or words of like import are used, it shall be understood that the requirements, permission, order, designation, or prescription of the City Engineer is intended; and similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, or acceptable to, or satisfactory to the City Engineer, subject in each case to the final determination of the City.

Laboratory - The official testing laboratories of the City or such other laboratories as may be designated by the City Engineer.

Legal Holiday - The following are legal holidays for the City, subject to subsequent change by law: Sundays, New Year's Day, M.L. King's Birthday, President's day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving and the Friday after Thanksgiving, Christmas, and other days declared as holidays by public proclamation. When a legal holiday, other than Sunday falls on a Sunday, the Monday immediately following is a legal holiday.

Materials - Any natural or manmade substance specified for use in the construction of the Project or for incorporation into the Work.

Modification -

- (a) A written amendment of the Contract Documents signed by both parties.
- (b) A Contract Change Order issued by the City or Owner.
- (c) Written clarification or interpretation issued by the City Engineer.
- (d) A written order for a minor change or alteration in the work issued by the City Engineer.
- (e) A modification may only be issued after execution of the Agreement.

Notice of Award - The written notice by City to the apparent successful Bidder stating that upon compliance with the conditions precedent to be fulfilled by him within the time specified, the City will execute and deliver the Agreement to him.

Notice to Proceed - A written notice authorizing the Contractor to begin performance of contract work. If applicable, the Notice to Proceed shall state the date on which the Contract Time will commence to run.

Or Equal - The term "or equal" shall be understood to mean that an "equal" product is the same or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the City Engineer. Such "equal" products shall not be purchased or installed by the Contractor without the City Engineer's written approval.

Owner - The legal entity or contracting agency for which the work is being performed. Where applicable the Developer is the owner until such time as the improvements are accepted by the City for maintenance.

Pavement – Asphalt Concrete or Portland cement concrete placed for the use of motor vehicles, bicycles, or pedestrians on streets, roadways, shoulders, Multi-use paths and parking areas.

Pay Item – A specific unit of Work for which a price is provided in the Contract.

Payment Bond - The approved form of security furnished by the Contractor and Contractor's surety as a guaranty of the Contractor's performance of its obligation to pay promptly in full all sums due for materials, equipment, and labor furnished to complete construction of the work.

Performance Bond - The approved form of security furnished by the Contractor and Contractor's surety as a guaranty that the Contractor will complete the work in accordance with the terms of the Agreement.

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

Project – The sum of all Work to be performed under the Contract.

Proposal - The written offer of a bidder submitted on the approved proposal form(s) agreeing to enter into a Contract with the City to perform the Work described in the Contract Documents and stating the unit prices or lump sum amounts for the items of Work.

Proposal Guaranty - See Bid Security.

Reference Specifications - Bulletins, standards, rules, methods of analysis or test, codes and specifications included by reference in the Contract Documents.

Special Provisions - See SPECIAL SPECIFICATIONS.

Special Specifications - Requirements peculiar to the project; and modifications to the Standards and Specifications. Special Specifications are used interchangeably with Special Provisions.

Specifications - The terms, provisions and requirements contained herein as supplemented by such special conditions as may be necessary, pertaining to either the materials and/or work to be furnished under the Agreement.

Standard Specifications - Codes, rules and regulations referred to in these specifications by basic name or designation only, shall be considered to be of the latest issue with all amendments as of the date of these specifications. Applicable portions of such shall become a part of these Contract Documents.

Structures - Facilities such as bridges, culverts, catch basins, inlets, retaining walls, cribbing, storm and sanitary sewer lines, water lines, utility cables and pipelines, underdrains, electrical ducts, manholes, lighting fixtures and bases, transformers, flexible and rigid pavements; buildings, vaults, and other man-made features that may be encountered in the work and not otherwise classified herein.

Subcontractor - An individual, firm, or corporation having a direct contract with the Contractor or any other subcontractor for the performance of a portion of the work on the project, or those who furnish material for the project.

Subbase – A course of specified material of specified thickness between the Subgrade and a Base.

Subgrade – The top surface of completed earthwork on which Subbase, Base, Surfacing, Pavement, or a course of other material is to be placed.

Superintendent - The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the City Engineer, and who shall supervise and direct the construction.

Surety - A corporation, licensed to conduct the business of surety in the State of Oregon, and named in the current list of approved sureties published by the U. S. Treasury Circular 570. All bonds signed on behalf of the Surety must be accompanied by a certified copy of

the authority to act.

If the Surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in the State of Oregon, or it ceases to meet the requirements outlined above, Contractor shall within five (5) days thereafter, substitute another Bond and Surety, both of which shall be acceptable to City of Sisters.

Topsoil – Soil ready for use in a planting bed.

Traveled Way – That part of a street or highway for moving vehicles, exclusive of auxiliary lanes, berms, curbs, and shoulders.

Typical Section – The Cross Section established by the Plans which represents in general the lines to which the Contractor shall work in the performance of the Contract.

Unsuitable Material – Frozen material, or material that contains organic matter, muck, humus, peat, sticks, wood chips, debris, chemicals, toxic matter, or other deleterious materials not normally suitable for use in earthwork.

Utility – A line, facility, or system for producing, transmitting, or distributing communications, power, electricity, heat, gas, oil, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity which directly or indirectly serves the public.

Work - the term shall signify all materials, labor, tools and all appliances, machinery and appurtenances necessary to perform and complete the construction of all facilities 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. As used herein, "provide" shall be understood to mean "furnish and install".

Working Day - Any and every calendar day excluding Saturdays, Sundays, and legal holidays. Unless otherwise permitted a working day occurs between the hours of 7:00 am and 5:00 pm.

Written Notice - A written communication delivered 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.

101.2.00 ABBREVIATIONS

Meanings of abbreviations used in the Standard Specifications, Supplemental Specifications, Special Provisions, on the Plans, and in other Contract Documents are as follows:

AASHTO	American Association of State Highway and Transportation Officials
AC	Asphalt Concrete
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
APA	American Plywood Association
APWA	American Public Works Association
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
AWG	American Wire Gage
CRSI	Concrete Reinforcing Steel Institute
DEQ	Department of Environmental Quality, State of Oregon
FHWA	Federal Highway Administration, U.S. Department of Transportation
HMAC	Hot Mixed Asphalt Concrete
MFTP	(ODOT) Manual of Field Test Procedures
MUTCD	Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, U.S. Department of Transportation
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NESC	National Electrical Safety Code
NFPA:	National Fire Protection Association
NIST	National Institute of Standards and Technology
NPDES	National Pollutant Discharge Elimination System
NPS	Nominal Pipe Size (dimensionless)
OAR	Oregon Administrative Rules
ODOT	Oregon Department of Transportation
ORS	Oregon Revised Statutes
OR-OSHA	Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services.
OSHA	Occupational Safety and Health Administration, U.S. Department of Labor
PCA	Portland Cement Association
PCP	Pollution Control Plan
RAP	Reclaimed Asphalt Concrete Pavement
SRCM	Soil and Rock Classification Manual (ODOT)
UBC	Uniform Building Code (as adopted by the City of Redmond and State)
UL	Underwriters Laboratories, Inc
UPC	Uniform Plumbing Code (as adopted by the City of Redmond and State)
WWPA	Western Wood Products Association

102 CONTRACT DOCUMENTS

102.1.00 INTENT OF CONTRACT DOCUMENTS

The intent of the Contract Documents is to describe a complete project to be constructed in accordance with the Agreement, Standard and Supplemental Specifications, Special Provisions, Plans and Details. The Contract Documents are complimentary, and what is called for by any one shall be as binding as if called for by all. Any work that can be reasonably inferred from the Contract Documents as being required to produce the intended results shall be supplied whether or not it is specifically called for. 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.

102.2.00 INCONSISTENCIES AND OMISSIONS

Any inconsistency, conflict, error or omission found in the Contract Documents shall be reported to the City Engineer in writing immediately and before proceeding with the work affected thereby; however, Contractor shall not be liable to City of Sisters or City Engineer for failure to discover any conflict error or inconsistency in the Contract Documents. The City Engineer will clarify inconsistencies or omissions, in writing, within a reasonable time. The decision of the City Engineer shall be final.

In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:

1. Modifications, the last in time being the first in precedence, including all Addenda and Change Orders.
2. Agreements
3. Supplemental Specifications
4. Special Provisions or Specifications
5. Standard Specifications
6. Instructions to Bidders
7. General Conditions
8. Reference Specifications
9. Plans

Figure dimensions on plans shall take precedence over scale dimensions. Detailed Drawings and Approved Shop Drawings shall take precedence over general plans.

102.3.00 ALTERATIONS AND CHANGE ORDERS

The City of Sisters, without invalidating the Agreement, may at any time or from time to time, order extra work or make changes by modifying, adding to, or deducting from the work. All such work shall be authorized by Change Order and executed under the conditions of the original Agreement, except that claim by either party for time and payment increase or decrease caused thereby shall be adjusted at the time of ordering such change.

The City Engineer may authorize minor changes in the work not involving extra cost, and not inconsistent with the overall intent of the Contract Documents.

Additional work performed by Contractor, without authorization of a Change Order, will not entitle the Contractor to an increase in the Contract Price except for an emergency endangering life or property.

If the work is reduced by modifications directed by the Engineer, such action shall not

constitute a claim for damages based on loss of anticipated profits.

102.4.00 VERIFICATION OF DATA

It is understood and agreed that the Contractor has, by careful examination, satisfied him/herself as to the nature and location of the work; the conformation of the grounds; the character, quality, and quantities needed preliminary to and during the prosecution of the work; the general and local conditions; and all other matters which may in any way affect the work under this Agreement. No verbal agreement or conversation with any officer, agent, or employee of the City of Sisters, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations contained in the Agreement.

102.5.00 DOCUMENTS TO BE FURNISHED

The City Engineer will furnish to the Contractor, on request, three copies of the Contract Documents and three sets of full scale Plans. Additional copies of Contract Documents or Plans may be obtained on request by paying the actual cost of reproducing the Contract Documents or Plans.

102.6.00 DOCUMENTS TO BE KEPT AT THE WORK SITE

The Contractor shall keep one copy of the Contract Documents at the work site, in good condition, available to the City Engineer and to the City Engineers' representatives.

The Contractor shall maintain on the job site, and make available to the City Engineer upon request, one current marked-up set of the Design Drawings, which accurately indicate all approved variations in the completed work that differ from the design information shown on the Drawings.

102.7.00 OWNERSHIP OF DOCUMENTS AND DRAWINGS

All Plans, Drawings, Specifications and copies thereof furnished by the City Engineer are the property of the City of Sisters and are not to be used on other work; and are to be returned upon request at the completion of the work, with the exception of the signed contract set. Any reuse of these materials without specific written authorization by the City Engineer will be at the sole risk of the user and without any liability or legal expense to the City. All models used in the Work are the property of the City of Sisters.

102.8.00 RECORD DOCUMENTS

The Contractor shall maintain copies of all Drawings, Specifications, Addenda, Change Orders, Contract Modifications, and written interpretations and clarifications in good order and annotated to show changes made during construction. Upon completion of the Work, these record documents, samples and shop drawings will be delivered to the City Engineer for Owner.

103 THE CITY ENGINEER

103.1.00 AUTHORITY OF THE CITY ENGINEER

The City Engineer shall be the City of Sisters representative during the construction and shall observe the work in progress on behalf of the City. The general inspection of the construction will not, however, relieve the Contractor(s) from their obligation to conduct comprehensive inspections and to maintain full responsibility for the methods and sequence of construction, the safety precautions incidental thereto, and for performing the

construction work in accordance with the Contract Documents. The City Engineer shall also have the authority to reject all work and materials which do not conform to the Plans or Specifications, or other Contract Documents. The City Engineer will render decisions, in writing, on all claims of the City or the Contractor, and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents. The City Engineer's estimates and decisions shall be the condition precedent to the right of the Contractor to any action on the Agreement and to any right to receive additional money under the Agreement. The City Engineer shall have the authority to order changes in the work or extra work, as provided in the paragraph "Alterations and Change Orders" of the Section CONTRACT DOCUMENTS.

The City Engineer will not be responsible and has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform work.

103.2.00 CITY ENGINEER'S REPRESENTATIVES (INSPECTORS)

Assistants may be assigned to various portions of the work by the City Engineer. It is understood that such assistants shall have the power, in the absence of the City Engineer, to issue clarifications and make decisions within the limitations of the authority of the City Engineer.

103.2.01 AUTHORITY AND DUTIES OF THE ENGINEER'S REPRESENTATIVE

The City Engineer may appoint assistants to inspect all materials used and all work done. Such inspection may extend to any or all parts of the work and to the preparation or manufacture of the materials to be used. The Inspectors will be authorized to revoke, alter, enlarge, or relax the provision on the work, to check the necessary lines and grades, and to keep the Engineer informed as to the progress of the work and the manner in which it is being done; also to call the attention of the Contractor to any discrepancies from approved plans and specifications. Failure of the Inspector or the Engineer to call the attention of the Contractor to faulty work or discrepancies from the plans or specifications shall not constitute acceptance of said work.

The Inspector will not be authorized to approve or accept any portion of the work, nor to issue instructions contrary to the approved plans and specifications. The Inspector will have authority to reject defective material and to suspend any work that is being improperly done, subject to the final decision of the Engineer. The Inspector will exercise such additional authority as may, from time to time, be delegated to the Inspector by the Engineer. The authority of such Engineer's, representatives, assistants, and inspectors 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. Upon request, the assignment and duties of the Inspector(s) will be provided in writing.

103.3.00 INSPECTION

The City Engineer and/or Inspector will make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the Contract Documents. The City Engineer and/or Inspector will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. His/her efforts will be directed toward providing assurance for the City of Sisters that the completed project will conform to the requirements

of the Contract Documents. On the basis of his/her on-site observations as an experienced and qualified professional, the Inspector will keep City of Sisters staff informed in the progress of the work and will endeavor to guard City of Sisters against defects and deficiencies in the work of Contractors.

103.4.00 REJECTED MATERIAL

Any material condemned or rejected by the City Engineer, or authorized Inspector, because of non-conformity with the Contract Documents shall be removed at once from the vicinity of the work by the Contractor, at Contractors' own expense, and shall not be used on the work.

103.5.00 UNNOTICED DEFECTS

The City Engineer will not be responsible for the acts or omissions of Contractor, or any subcontractor, or other persons at the site performing any of the Work. Any defective work or material that may be discovered by the City 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.

103.6.00 RIGHT TO RETAIN IMPERFECT WORK

If any part or portion of the work done or material furnished under this Agreement shall prove defective and not in accordance with the Plans and Specifications, and if the imperfection in the work 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 City shall have the right and authority to retain such work. In such case, an appropriate amount shall be deducted from amounts due the Contractor for that portion of the Work, or if acceptance occurs after approval of final payment, an appropriate amount shall be paid by Contractor to City of Sisters.

103.7.00 LINES AND GRADES

The Design Engineer after consultation with the City Engineer will provide survey monuments or reference points for use in determining lines and grades. The Contractor is responsible for determining the lines and grades to be used for the construction as shown on the plans and in these Contract Documents.

All monuments, stakes, marks, and other information shall be carefully preserved by the Contractor, and in case of their careless or unnecessary destruction or removal by the Contractor or Contractors' employees, such stakes, marks and other information will be replaced at the Contractor's expense.

103.8.00 DETAIL DRAWINGS AND INSTRUCTIONS

The City Engineer will furnish, with reasonable promptness, additional instructions by means of drawings or otherwise, as are necessary for the proper execution of the work. All such drawings and instructions will be consistent with the Contract Documents.

103.9.00 SHOP DRAWINGS AND SAMPLE SUBMITTAL

The Contractor shall submit in quadruplicate to the Engineer for this review such shop drawings, electrical diagrams, and catalog cuts for fabricated and manufactured items

(including mechanical and electrical equipment) as required by the Contract Documents. Drawings shall be submitted in sufficient time to allow the City Engineer not less than ten (10) regular working days for examining the drawings.

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

Unless otherwise approved by the City Engineer, shop drawings shall be submitted only by the General Contractor, who shall indicate by a signed stamp on the drawings, or other approved means, that the Contractor has checked the shop drawings for dimensions and relationship with work of all other trades involved, and that the work shown is in accordance with contract requirements. The practice of submitting incomplete or unchecked shop drawings for the City Engineer to correct or finish will not be acceptable. Shop drawings which in the opinion of the City Engineer clearly indicate that they have not been checked by the General Contractor will be considered not complying with the intent of the Contract Documents, and will be returned without review to the Contractor for resubmission in the proper form.

When the shop drawings have been reviewed by the City Engineer, two sets of submittals will be returned to the Contractor appropriately stamped. If major changes or corrections are necessary, the drawing may be rejected and one set will be returned to the Contractor with such changes or corrections indicated. The Contractor shall have the drawings corrected, and resubmit the corrected drawings in quadruplicate, unless otherwise directed by the City Engineer. No changes shall be made by the Contractor to resubmitted shop drawings other than those changes indicated by the City Engineer.

The review of such drawings and catalog cuts by the City Engineer shall not relieve the Contractor from the responsibility for correctness of dimensions, fabrication details, and space requirements, or for deviations from the contract drawings or specifications, unless the Contractor has called attention to such deviations in writing by a letter accompanying the drawings, and the City Engineer approves the change or deviations in writing at the time of submission. Nor shall review by the City Engineer relieve the Contractor from the responsibility for errors in the shop drawings. When the Contractor does call such deviations to the attention of the City Engineer, the Contractor shall state in the letter whether or not such deviations involve any deduction in the Contract Price or extra cost adjustments. The approval of a separate item as such will not indicate approval of the assembly in which the item functions.

The Contractor shall also submit to the City Engineer for approval with such promptness as to cause no delay in the Work all samples required by the Contract Documents. All samples shall be clearly identified as to material, manufacturer, and any pertinent catalog number if applicable, and the use in the Work for which it is intended.

Where a shop drawing or sample submittal is required by the Contract Documents, no related work shall be commenced until the submittal has been approved by the City Engineer.

104 THE CONTRACTOR AND EMPLOYEES

104.1.00 CONTRACTOR AS AN INDEPENDENT AGENT

The Contractor shall perform all work under this Agreement as an Independent Agent and shall not be considered as an agent of the City, nor shall the Contractor's subcontractors or employees be considered as sub-agents of the City.

104.2.00 SUBCONTRACTING

The Contractor shall include, in the space provided in the Letter for Employment of Subcontractors, the legal corporate names of all proposed subcontractors and the portion of the work that these proposed subcontractors or other persons or organizations shall perform.

The Contractor agrees that she/he is as fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them as he/she is for the acts and omissions of persons directly employed by Contractor. Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the City of Sisters.

Subcontractors shall be in accordance with, and the Contractor shall be bound by, the following provisions:

1. All subcontractors shall be subject to the approval of the City Engineer.
2. All subcontracts shall be in writing and shall provide that all work to be performed thereunder shall be performed in accordance with the terms of these Contract Documents.
3. If requested, true copies of any and all subcontracts shall be furnished to the City Engineer; however, prices may be omitted.
4. Subcontractors shall conform to the regulations governing employment of labor and payment of wages.
5. The subcontracting of any part of the work will in no way relieve the Contractor of his/her responsibility or liability or obligations under these Contract Documents.

104.3.00 INSURANCE AND LIABILITY

The Contractor shall at all times maintain in force, at Contractor's expense, each insurance policy noted below. Insurance coverage must apply on a primary and non-contributory basis. All insurance policies, except Professional Liability, shall be written on an occurrence basis and be in effect for the term of this contract. Policies written on a "claims made" basis must be approved and authorized by the City of Sisters. Formats of insurance certificates and endorsement(s) must be acceptable and approved by the City.

All contractors shall obtain Workers Compensation insurance in compliance with ORS 656.017, requiring Contractor and all subcontractors to provide workers' compensation coverage for all subject workers, or provide certification of exempt status. Employers' Liability Insurance with coverage limits of not less than \$500,000 must be included.

Contractors who provide specific professional advice which the City relies on (e.g. - engineers, attorneys, architects, insurance agents) are required to obtain Professional Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate. Professional Liability insurance covers damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail

coverage” for claims made within two years after this contract is completed. The City will determine the contractor's need to obtain Professional Liability insurance.

All contractors shall obtain Commercial General Liability insurance with a combined single limit of not less than:

Projects with value up to two million dollars: \$1,000,000 per occurrence/ \$2,000,000 aggregate.

Projects with value from two million dollars to five million dollars: \$2,000,000 per occurrence/ \$5,000,000 aggregate.

Projects with value over five million: Insurance amount to be determined by the City of Sisters on individual contract basis.

Commercial General Liability insurance shall include coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, contractual liability, and completed products/operations. *By separate endorsement*, the policy shall name The City of Sisters, its officers, directors, agents, employees and volunteers as an additional insured. The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit and shall be primary and non-contributing endorsements. The contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the City are maintained. Construction contracts may include aggregate limits that apply on a “per location” or “per project” basis.

Automobile Liability insurance with a combined single limit of not less than \$1,000,000 coverage for bodily injury and property damage resulting from operation of a motor vehicle driven by or on behalf of Contractor during the course of providing services under this contract. Commercial Automobile Liability Insurance shall provide coverage for *any* motor vehicle (symbol 1 on some insurance certificates).

Additional Requirements: Contractor shall pay all deductibles and retentions. A cross liability clause or separation of insured's condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage will be primary in the event of loss.

Certificate of Insurance Required: Contractor shall furnish a current Certificate of Insurance to the City with the signed Contract. The Certificate shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without at least 30 days written notice from the Contractor's insurer to the City. The Certificate shall also state the deductible or, if applicable, the self-insured retention level. For commercial general liability coverage, the Certificate shall also provide, by policy endorsement, that The City of Sisters, its agents, directors, officers, employees and volunteers are additional insureds with respect to Contractor's services provided under this Contract. The endorsement must be in a format acceptable to The City of Sisters. If requested, complete copies of all insurance policies shall be provided to the City.

The Contractor's liability and property insurance with a Completed Products/Operations Endorsement shall be maintained after the completion of the project for the full warranty period. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from

operations under this Agreement.

When the construction is to be accomplished within a public or private right-of-way requiring special insurance coverage, the Contractor shall conform to the particular requirements and provide the required insurance. The Contractor shall include in liability policy all endorsements that the said authority may require for the protection of the authority, its officers, agents, and employees. Insurance coverage for special conditions, when required shall be provided as set forth in the SUPPLEMENTARY CONDITIONS.

In case of the breach of any provision of this article, the City, at its option, may take out and maintain at the expense of the Contractor such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Agreement.

104.4.00 CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

The Contractor shall not commence work under this Agreement until Contractor has obtained all the insurance required hereunder and such insurance has been reviewed by the City of Sisters, nor shall the Contractor allow any subcontractor to commence work on subcontract until all similar insurance required for that portion of the work has been so obtained. Review of the insurance by the City shall not relieve or decrease the liability of the Contractor hereunder.

104.5.00 NO PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions hereof in or exercising any authority granted by the Agreement, there will be no personal liability upon any public official.

104.6.00 SUPERVISION

The Contractor shall keep on the project, during its progress, competent supervisory personnel. The Contractor shall designate, in writing, before starting work, an authorized representative who shall have complete authority to represent and to act for the Contractor. The Contractor shall give efficient supervision to the work, using his/her best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, and procedures, and for providing adequate safety precautions and coordinating all portions of the work under the Agreement. The Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents.

104.7.00 NONRESPONSIBILITY OF THE CITY OF SISTERS

Indebtedness incurred for any cause in connection with this work must be paid by the Contractor, and the City is hereby relieved at all times from any indebtedness or claim other than payments due under terms of the Agreement.

104.8.00 PROPERTY RIGHTS IN MATERIAL

Nothing in the Agreement shall be construed as vesting in the Contractor any right to the property or in the material used after they have been attached or affixed to the work or the soil and accepted by the City. All such materials shall become the property of the City upon being so attached or affixed and accepted.

104.9.00 RECEPTION OF CITY ENGINEER'S DIRECTION

The superintendent, or other duly authorized representative of the Contractor, shall represent the Contractor in his/her absence; and all directions given to him/her shall be as

binding as if given to the Contractor.

104.10.00 FACILITIES AND SANITATION

Necessary sanitary conveniences, properly secluded from public observation, shall be erected and maintained by the Contractor at all times while persons are employed on the work; and the use of such sanitary conveniences shall be strictly enforced. The location of such conveniences shall be approved by the City Engineer.

104.11.00 EMPLOYEES

The Contractor shall employ only competent skillful labor to perform the work. The Contractor shall at all times enforce strict discipline and good order among employees. The Contractor shall comply with all applicable labor rules, wage scales, and regulations, including nondiscriminatory laws, of the Government of the United States, the State, County, and City or Town in which the work is to be done.

105 OREGON LAW FOR PUBLIC CONTRACTS

105.1.00 DESCRIPTION

When the Contract Documents concern Public Works for the state or any county, municipality, or political subdivision created by its laws, the applicable statutes of the State of Oregon shall apply. For this reason, Sections 279C.800 through 279C.870 of the Oregon Revised Statutes, as amended or superseded, including the latest additions and revisions, are incorporated by reference as part of these Contract Documents.

105.2.00 REQUIREMENTS

ORS Sections 279C.800 *et seq.* provide for the prevailing wage requirements of Oregon law for Public Contracts.

1. Concerning payments for laborers and material, contributions to Workmen's Compensation Board, prevention of liens, payment of withholding taxes.
2. Concerning the maximum hours of labor, payment of medical care and attention to employees, liability to workers for violation of minimum wage rate requirements.
3. Concerning written notice to all employees of the number of hours per day and days per week that they may be required to work.
3. Concerning payment of claims by public officers, termination of Agreement because of a national emergency, conditions concerning the forfeiture of the Agreement.
4. Concerning payment of not less than prevailing wage rates, the Contractor shall pay not less than the prevailing rate of wages in conformance with ORS 279C.825. Certification of wage payments by the Contractor shall be submitted to the City of Redmond in conformance with ORS 279C.845. Wage certification forms shall be provided by the Contractor.
5. The schedule of minimum hourly wage rates, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI) of the State of Oregon is included by reference within these Contract Documents. Any revisions will be delivered to all bidders in the form of Addendum to the Agreement.
6. The City does not guarantee that labor can be procured for the minimum wages in the wage scale. The rates of wages listed are minimums only, below which the Contractor cannot pay. The Contractor shall ascertain the wages above the minimum set forth that the Contractor may have to pay.
7. It is understood and agreed that all parties to this Agreement shall determine the

contents of these applicable statutes and comply with their provisions throughout the performance of the Agreement.

106 SAFETY

The City Engineer has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences or procedures required for the Contractor to perform work.

The Contractor will be solely and completely responsible for conditions of the work site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable State, County, and local laws, ordinances and codes, and to the current safety regulations as set forth in the Oregon Safety Codes adopted and published by the Workmen's Compensation Board, Salem, Oregon.

The Contractor shall also comply with "U.S. Department of Labor Occupational Safety and Health Act," the "Construction Safety Act" administered by the U.S. Department of Labor, the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, and the "Manual on Uniform Traffic Control Devices", except where these are in conflict with state laws, in which case the more stringent requirements shall be followed.

The Contractor shall maintain at office or other well known place at the work site, all articles necessary for giving first-aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of all persons (including employees) who may be injured on the work site.

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

If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the City Engineer and the City of Sisters. In addition, the Contractor must promptly report in writing to the City Engineer all accidents whatsoever arising out of, or in connection with, the performance of the work whether on, or adjacent to, the site, giving full details and statements of witnesses.

If any claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the City Engineer, giving full details of the claim.

107 PROTECTION OF PROPERTY

The Contractor shall adopt every practical means and comply with all laws, ordinances, and regulations in order to minimize interferences to traffic and inconveniences, discomfort, and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded in accordance with the "Manual on Uniform Traffic Control Devices".

The Contractor shall not trespass upon private property and shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from Contractors operations in completing this work. The Contractor shall comply with the laws and regulations of the City of Redmond, county, and state, relating to the safety of persons and property, and will be held responsible and required to make good any injury or damage to persons or property caused by carelessness or neglect on the part of the Contractor or subcontractor(s), or any agent or employee of either during the progress of the work and until its final acceptance.

The Contractor shall protect against injury any pipes, conduits, utilities, lawns, gardens, shrubbery, trees, fences, or other structures or property, public and/or private, encountered in this work except as stipulated elsewhere herein. The Contractor shall be responsible and liable for any damage to such pipe, structures, and property.

The Contractor shall protect this work and materials from damage due to the nature of the work, the elements, carelessness of other contractors, or from any cause until the completion and acceptance of the work. All loss or damages arising out of the nature of the work to be done under the terms of these Contract Documents, or from any unforeseen 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.

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 City Engineer, is hereby obligated to act, at her/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 as covered under the section 'Change Orders'.

107.1.00 SITE RESTORATION AND CLEANUP

At all times during the work, the premises are to be kept clean and orderly, and upon completion of the work, the project shall be free of rubbish or excess materials of any kind. During construction, stockpile the excavated trench materials so as to do the least damage to adjacent lawns, grassed areas, gardens, shrubbery or fences, regardless of whether these are on private property, City, State or County rights-of-way. Remove all excavated materials from grassed and planted areas; and leave these surfaces in a condition equivalent to their original condition and free from all rocks, gravel, boulders or other foreign material. Replace topsoiled areas as specified in SURFACE RESTORATION, raked and graded to conform to their original contours. All existing drainage ditches and culverts shall be reopened and graded and natural drainage restored. Restore culverts broken or damaged to their original condition and location. Upon completion of pipe laying and backfilling operations in any section, hand rake and drag all former grassed and/or planted areas leaving all disturbed areas free from rocks, gravel, clay or any other foreign material. The finished surface shall conform to the original surface and shall be free draining, free from holes, rough spots or other surface features detrimental to a seeded area.

107.2.00 STREET CLEANING

Clean all spilled dirt, gravel or other foreign material caused by the construction operations from all streets and roads at the conclusion of each day's operation.

108 MATERIALS AND APPLIANCES

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.

Unless otherwise specified, all materials shall be new, of U.S. Domestic manufacture or as allowed by the North American Free Trade Agreement, and both workmanship and materials shall be of good quality as determined by the City Engineer or designee. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processors, except as otherwise provided in the Contract Documents.

If the specifications, law, ordinance or applicable rules or regulations permit Contractor to furnish or use a substitute that is equal to any material or equipment specified and if Contractor wishes to furnish to use a proposed substitute, Contractor shall make written application to City Engineer for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified; stating whether or not its incorporation in or use in connection with the project is subject to the payment of any license fee or royalty; and identifying all variations of the proposed substitute from that specified and indicating available maintenance service. No substitute shall be ordered or installed without the written approval of City Engineer who will be the judge of equality and may require Contractor to furnish such other data about the proposed substitute as he/she considers pertinent. No substitute shall be ordered or installed without such performance guarantee and bonds as City of Sisters may require which shall be furnished at Contractor's expense.

In selecting and/or approving equipment for installation in the project, the City of Sisters and City Engineer assume no responsibility for injury or claims resulting from failure of the equipment to comply with applicable national, state, and local safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.

108.1.00 MATERIALS FURNISHED BY THE CITY OF SISTERS

All materials and/or services furnished by the City shall be obtained by the Contractor as indicated in these Contract Documents. The cost of handling and placing City furnished materials shall be included in the price paid for the Agreement item involving such material.

108.2.00 SAMPLES, TESTING AND INSPECTION

All materials to be incorporated in the work shall be subject to sampling, testing, and approval. The City Engineer may select samples in the presence of the Contractor to be delivered and tested as required by the Specifications at a laboratory approved by the City,

at no additional cost to the City of Sisters. Testing shall conform to City of Sisters Standards and Specifications and be performed by a certified/independent testing laboratory as approved by City Engineer.

All sampling and testing of materials shall be done in accordance with the latest designated standard methods of AASHTO, ASTM, etc., or in accordance with special methods designated in the Specifications.

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 City Engineer. When required, the Contractor shall furnish certificates of tests of materials and equipment made at the point of manufacture by a independent, certified testing laboratory.

The City Engineer may require additional testing of any portion of the work. When additional testing is required by City Engineer, the City shall pay cost of any passing test. The Contractor shall pay the cost of any non-passing test.

The City Engineer and representatives, and authorized representatives of public 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.

If the Specifications, laws, ordinances, or any authorized representative require any work to be specially tested or approved, the Contractor shall give the City Engineer timely notice of its readiness for inspection. If the inspection is by authority other than the City Engineer's, the City Engineer shall be given timely notice of the date fixed for such inspection. Inspections by the City Engineer will be promptly made, and where practicable, at the source of supply. If any work should be covered without approval or consent of the City Engineer, it shall, if required by the City Engineer, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Engineer; and, if so ordered, the work shall be uncovered by the Contractor. If such work be found not in accordance with the Contract Documents, the Contractor shall correct the defective work at no additional cost to the City of Sisters.

Neither observations by City Engineer nor inspections, tests, or approvals by persons other than Contractor shall relieve Contractor from obligations to perform work in accordance with requirements of the Contract Documents.

108.3.00 CONTRACTOR'S RESPONSIBILITY FOR MATERIALS

108.3.01 RESPONSIBILITY FOR MATERIAL FURNISHED BY CONTRACTOR

The Contractor shall be responsible for all material furnished by Contractor. All such material shall be examined by a City Representative and any material not meeting specifications, or that is defective in manufacture, or that has been damaged after delivery, shall be replaced or corrected by the Contractor at Contractor's expense.

108.3.02 RESPONSIBILITY FOR MATERIAL FURNISHED BY CITY

The Contractor's responsibility for material furnished by the City shall begin upon

Contractor's acceptance at the point of delivery to Contractor. All such material shall be immediately examined, and material defective in manufacture and/or otherwise damaged shall be rejected by the Contractor at the time and place of delivery to Contractor, to be replaced by the City. Once accepted by the Contractor, defective and/or damaged material discovered prior to final acceptance of the work shall be removed by the Contractor and shall be replaced, at Contractors own expense, the defective material. In such case the Contractor shall furnish all labor, equipment and material incidental to replacement and necessary for the completion of the work to the satisfaction of the Engineer.

108.4.00 CONSTRUCTION STAKING

108.4.01 SCOPE

The purpose of this section is to define the responsibilities for surveying. All survey work shall be conducted under the supervision of a Registered Professional Land Surveyor, licensed in the State of Oregon. The Contractor will be responsible for providing all construction staking as required to complete the work. The Design Engineer will provide bench marks, control points, and reference points as shown on the plans or as required by the Contractor to the City Engineer for review and approval prior to establishing control for construction staking. The Contractor will be responsible for establishing centerline location and elevations.

108.4.02 STAKES

Construction stakes and stakes which are reference points for construction work will be conspicuously marked. It shall be the responsibility of the Contractor to inform his/her employees and her/his subcontractors of their importance and the necessity for their preservation.

The Contractor will provide vertical and horizontal construction staking in the proximity of the work. Construction staking will be provided at 50' intervals on tangent and 25' intervals on curve. The grade stakes at a minimum should contain the following information:

Engineer's station
Offset from line
Cut or fill to grade

108.4.03 FLAGGING CODE

A color code may be established during the course of the project indicating specific colors for the various kinds of stakes to be set.

108.4.04 SEWER

Both gravity and pressure sewer lines will be construction staked by means of an offset line with pipe invert cut information provided. Grades for pressure sewer will be provided by the subgrade stakes for streets. Finish grades will be provided as required.

Manholes will have two reference points (swing-ties) indicating the center of the manhole and, flow invert elevation. Ends of services will be staked.

108.4.05 WATER

Water lines will be staked every 50ft. by means of an offset line after the street subgrade has been constructed. No cut stakes will be provided in existing streets where 36" of cover is all that is required. However, cut stakes will be required if deeper cuts are needed to go

under or over utilities, etc. Appurtenances will be staked as required. Fire hydrants will have two reference points (swing ties) indicating the hydrant cap nut with elevations. Finish grades will be provided as required.

108.4.06 STREET

Prior to commencing construction, clearing limits shall be established.

Where a significant (greater than 5') cut or fill is required for subgrade, slope stakes and construction staking for subgrade will be provided.

Curb line shall be staked by means of an offset line no more than 6' offset from the top face of curb, showing the cut or fill to the finish work. Said stakes shall be protected and saved for a period of five (5) working days after construction of curbs to enable the Inspector to approve the alignment and grade.

Base rock shall be staked by painting an appropriate target on the curb and providing construction stakes (blue tops) on centerline. Blue tops will also be provided at the gutter line for the centerline and gutter lines of any intersecting street.

108.4.07 STRUCTURES

All structures shall be staked to the line and grade as shown on the plans or as directed by the Engineer.

109 CONTRACT LEGALITIES

109.1.00 PERMITS AND LICENSES

The Contractor shall keep fully informed of all local ordinances, State and Federal laws, ordinances and regulations, in any manner affecting the work herein specified. Contractor shall at all times comply with said ordinances, laws, and regulations, and protect and indemnify the City of Sisters and officers and agents against any claim or liability arising from or based on the violation of such laws, ordinances, or regulations. Permits and licenses of a temporary or construction nature including government charges and inspection fees necessary for the prosecution of the work shall be secured and paid for by the Contractor. Easements and rights-of-way shall be secured by the City of Sisters, unless otherwise specified in the Supplementary Conditions.

109.2.00 ROYALTIES AND PATENTS

The Contractor shall pay all royalty and license fees. Contractor shall defend all suits or claims for infringement of any patent rights and shall save the City of Sisters harmless from loss on account thereof, except that the City of Sisters 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, contractor shall be responsible for such loss unless contractor promptly gives such information to the City Engineer or City of Sisters.

109.3.00 TAXES AND CHARGES

The Contractor agrees to withhold and pay any and all withholding taxes, whether State or Federal, sales tax, and to pay all Social Security charges and also all State Unemployment Compensation charges, and to pay or cause to be withheld, as the case may be, any 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.

109.4.00 INDEMNITY

The Contractor shall hold harmless, indemnify and defend the City of Sisters, the City Engineer and its consultants, and such of their officers and employees and agents, from any and all liability claims, losses, or damages arising or alleged to arise from or during the performance of the work described herein, by reason of any negligent, reckless, or intentional act or omission of the Contractor, any subcontractor or suppliers, or any agent, employee, or representative of any of them.

The obligation of Contractor shall not extend to the liability of City Engineer, his/her agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

109.5.00 UNFORESEEN DIFFICULTIES

The Contractor shall protect work and materials from damage due to the nature of the work, the elements, carelessness of other contractors, or from any cause whatever until the completion and acceptance of the work. All loss or damage arising out of a 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.

109.6.00 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

If the work should be stopped under an order of any court or other public authority for a period of three (3) months, through no act or fault of the Contractor or of anyone employed by Contractor; or if the City Engineer should fail to issue any estimate for payment within thirty (30) days after it is due; or if the City of Sisters should fail to pay the Contractor within thirty (30) days after the time specified in the paragraph "Partial Payment" of the section "Payment" any sum certified by the City Engineer, then the Contractor may, upon fifteen (15) days written notice to the City of Sisters and the City Engineer, stop work or terminate this Agreement and recover from the City of Sisters 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.

109.7.00 CORRECTION OF DEFECTIVE WORK AFTER FINAL ACCEPTANCE (WARRANTY)

All work shall be guaranteed for a period of one (1) year against defects in materials and workmanship. The Contractor hereby agrees to make, at own expense, all repairs or replacements necessitated by defects in materials or workmanship supplied by Contractor or subcontractors that become evident within one (1) year after the date of written notice from the City Engineer recommending final acceptance of the entire project, or entire schedule, by the City of Sisters. The Contractor also agrees to hold the City of Sisters 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 for same from the City of Sisters. If the Contractor fails to make the repairs and replacements promptly, the City of Sisters may do the work, and the Contractor and Contractors' surety shall be liable for the cost thereof.

109.07.01 WARRANTY

Upon acceptance of the construction by the City Engineer, a minimum one year warranty

agreement on materials and workmanship shall be initiated between the City of Sisters and the Developer.

The warranty shall be comprised of a bond or other approved security in a minimum value of 10% of the original improvement construction costs.

109.8.00 RELEASE OF LIENS OR CLAIMS

On public projects, neither the final payment nor any part of the retained percentage shall become due until the Contractor submits to the City a signed affidavit, satisfactory to the City Engineer, stating that so far as 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 City of Sisters.

If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the City all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

109.9.00 CONTRACTOR'S AND MANUFACTURER'S COMPLIANCE WITH STATE, OSHA, AND OTHER CODE REQUIREMENTS

The completed work shall include all necessary permanent safety devices such as machinery guards and similar ordinary safety items required by the State and federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the work (including City selected equipment) subject to such safety regulations shall be fabricated, furnished, and installed in compliance with these requirements. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein.

110 PROGRESS OF THE WORK

110.1.00 BEGINNING OF THE WORK

Before work shall be started and materials ordered, the Contractor shall meet and consult with the City Engineer or designee relative to materials, equipment, and all arrangements for prosecuting the work. The Contractor shall provide and comply with work schedule, as agreed upon in the preconstruction conference. The Contractor shall commence the work contemplated under these Contract Documents within three (3) days after the City of Sisters written notice to proceed unless otherwise notified by the City Engineer, and shall complete the work within the time specified in the Agreement, it being expressly understood and agreed that the time of beginning, rate of progress, and time of completion of the work are of the essence of this Agreement. Prior to beginning construction, the Contractor shall submit to the City Engineer a preliminary progress schedule; indicating the times (number of days or dates) for starting and completing the various stages of the work, including any milestones specified in the Contract Documents.

110.2.00 PROSECUTION OF THE WORK

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. Time is essence of this contract. Upon starting construction, the Contractor shall diligently and continuously pursue completion of the work with adequate crew and equipment. Should the Contractor, without the express approval of the City Engineer, reduce this effort,

it shall be considered a failure of the Contractor to complete the work in the time agreed upon. As such it shall fall under the provisions of 110.9.00 LIQUIDATED DAMAGES and liquidated damages may be assessed for each day of reduced operations. It is expressly understood and mutually agreed between all parties to the Agreement that the City Engineer shall not determine or be responsible for construction methods.

The Contractor shall perform the work and take such precautions as contractor may deem necessary to complete the project so all work will be in conformance with the Contract Documents within the Contract time.

If the Contractor desires to carry on work at night or outside the regular hours, contractor may submit application to the City of Sisters; but Contractor shall allow ample time to enable satisfactory arrangements to be made for inspecting the work in progress. The Contractor shall notify all business and Property owners within 500' of the construction limits at least 48 hrs prior to commencing night work and shall maintain a public relations log of all communications with effected parties for review by the City. If granted permission, Contractor shall light the different parts of the work in a manner satisfactory to the City Engineer and shall comply with all regulations of the City or State or other public body having jurisdiction.

The Contractor shall complete the work called for under the contract in all parts and requirements within the number of workdays, or before the completion date, as set forth in the contract

Where such case applies, a notice to proceed may be issued to the Paving Contractor when individual streets have been constructed and approved for base rock by the Engineer. Once the base rock has been delivered and spread, it shall be the Paving Contractor's responsibility to maintain the surface, including blading and watering as may be required. It is the intent of these specifications that paving commence immediately following the placement of base rock.

110.3.00 COOPERATION WITH UTILITIES

The Contractor is responsible for coordinating with utility owners. Before the Contractor performs any excavation she/he is to contact the Utilities Notification Center at 1-800-332-2344 at least forty-eight (48) hours prior to excavation. The Contractor shall conform to the requirements of ORS 757.541 to 757.571.

110.4.00 MAINTAINING TRAFFIC

The Contractor will be responsible to maintain two-way traffic at all times unless otherwise specified and approved by the City. The streets shall be open for two-way traffic at all times when the Contractor is not performing work unless otherwise specified. Approaches to all properties accessing to the project shall be maintained by the Contractor at all times except for short periods necessary to the progress of the construction.

110.4.01 PUBLIC SAFETY AND CONVENIENCE

The Contractor shall conduct the project with proper regard for the safety and convenience of the public. When the project involves use of public ways, Contractor shall provide flagmen when directed and install and maintain means of free access to all fire hydrants, service stations, warehouses, stores, houses, garages and other property.

Private residential driveways shall be closed only with approval of the Engineer or specific permission of the property owner. The Contractor shall not interfere with normal operation of public transit vehicles unless otherwise authorized. The Contractor shall not obstruct or interfere with travel over any public street or sidewalk without approval. Where detours are necessary, they shall be maintained with good surface and shall be clearly marked. The Contractor shall provide open trenches and excavations with adequate barricades of an approved type which can be seen from a reasonable distance. At night, the Contractor shall mark all open work and obstructions by lights. The Contractor shall install and maintain all necessary signs, lights, flares, barricades, railings, runways, stairs, bridges and facilities. The Contractor shall observe all safety instructions received from the Engineer or governmental authorities, but following of such instructions shall not relieve the Contractor from the responsibility or liability for accidents to workers or damage or injury to person or property.

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

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

110.5.00 ASSIGNMENT

Neither party to the Agreement shall assign the Agreement 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 Contractor hereunder without the previous written consent of the City of Sisters.

110.6.00 CITY OF SISTERS RIGHT TO DO WORK

If the Contractor should, in the opinion of the City Engineer, neglect to prosecute the work properly or should neglect or refuse at Contractors' own cost to take up and replace work as shall have been rejected by the City Engineer, then the City of Sisters shall notify the Surety of the condition and after ten (10) days written notice to the Contractor and the Surety, or without notice if an emergency or danger to the work or public exists, and without prejudice to any other right which the City of Sisters may have under the Agreement, 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.

110.7.00 CITY OF SISTERS RIGHT TO TERMINATE AGREEMENT

If the Contractor should be adjudged as bankrupt; or if the Contractor should make a general assignment for the benefit of her/his creditors; or if a receiver should be appointed to account of her/his insolvency; or if the Contractor 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 the Contractor should fail to make prompt payment to subcontractors for material or labor; or persistently disregards laws, ordinances, or the instructions of the City Engineer; or otherwise be guilty of substantial violation of any provision of the Agreement or any laws or ordinance; then the City, upon the certification of the City 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. 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 Agreement and employ, by Contractor or otherwise, any qualified person or persons to finish the work and provide the materials therefore, in accordance with the Contract Documents, without termination of the continuing full force and effect of this Agreement. 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. In lieu of the foregoing, if the City so elects, the City 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 the City 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 Agreement, including compensation for the additional managerial and administrative services, shall exceed such unpaid balance, the Contractor shall pay the difference to the City. The expense incurred by the City, as herein provided and the damage incurred through the Contractor's default shall be certified by the City Engineer.

Where Contractor's services have been so terminated by the City, said terminations shall not affect any rights of the City against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the City due Contractor will not release Contractor from liability.

Upon seven (7) days written notice to Contractor and City Engineer, the City may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Agreement. In such case, Contractor shall be paid for all work executed and any expense sustained plus a reasonable profit.

110.8.00 DELAYS AND EXTENSION OF TIME

If the Contractor shall be delayed at any time in the progress of the work by any act or neglect of the City or the City Engineer, or of any employee of either; or by any separate contractor employed by the City; or by changes ordered in the work; or by strikes, lockouts, fire, unavoidable casualties, or any cause beyond the Contractor's control which justified the delay, or by delay authorized in writing by the City Engineer, then the date for completion of the work shall be extended. Within 14 days after the Contractor submits to the City Engineer a written request for an extension of time, the City Engineer will determine the number of extension days due the Contractor. The City of Sisters will make the final decision on all requests for extension of time.

No such extension shall be made for delays occurring more than seven (7) days before a claim is made in writing to the City Engineer. In case of a continuing cause of delay, only one claim is necessary.

If no schedule or agreement stating the date upon which supplemental drawings shall be furnished by the City Engineer is made, then no claim for delay shall be allowed the Contractor on account of failure to furnish drawings until two (2) weeks after demand for such drawings, and not then unless such claim be reasonable.

No extension of time will be granted to the Contractor for delays occurring to parts of the work that have no measurable impact on the completion of the total work under this Agreement.

No extension of time will be considered for weather conditions normal to the area in which the work is being performed. Unusual weather conditions, if determined by the City Engineer to be of a severity that would stop all progress of the work, may be considered as cause for an extension of Agreement completion time.

Delays in delivery of equipment or material purchased by the Contractor or subcontractors (including City selected equipment) shall not be considered as a just cause for delay. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials.

The Contract Time may only be changed by a Change Order.

110.9.00 LIQUIDATED DAMAGES

Should the Contractor fail to complete the work, or any part thereof, in the time agreed upon in these Contract Documents or within such extra time as may have been allowed for delays by extensions granted as provided in these Contract Documents, the Contractor shall reimburse the City for the additional expense and damage for every day specified that the Agreement remains uncompleted after the date of specified completion. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the work shall be as given in the following schedule for each workday the work exceeds the number of workdays specified.

<u>Original Contract Amount</u>	<u>Liquidated Damages</u>
Up to \$100,000	\$200
\$100,000 to \$500,000	\$500
Greater than \$500,000	\$800

The said amounts are hereby agreed upon as liquidated damages for the loss to the City on account of expenses for the employment of engineers, inspectors, and other employees after the expiration of the time of completion, and on account of the value of the operation of the work 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 City is authorized to deduct the amount of such damages from any monies due the Contractor for work performed or material furnished under this Agreement; and the Contractor and Contractors' Sureties shall be liable for any excess.

110.10.00 OTHER CONTRACTS

The City 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 execution of their work and shall properly connect and coordinate Contractors work with theirs.

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 City Engineer any defects in such work that render it unsuitable for such proper execution and

results. The Contractor's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his/her work, except as to defects which may develop in the other contractor's work after execution of work.

110.11.00 USE OF PREMISES

The City shall furnish, as indicated in the Contract Documents and not later than the date when needed by Contractor, the lands upon which the work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of Contractor. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the City, unless otherwise specified in the Contract Documents. If the Contractor believes that any delay by the City in furnishing these lands or easements entitles Contractor to an extension of the Contract Time, she/he be entitled to make a claim under the terms of the Agreement. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

The Contractor shall confine equipment, the storage of materials, and the operation of workmen to limits shown on the plans or indicated by law, ordinances, permits, or directions of the City Engineer, and shall not unreasonably encumber the premises with materials.

110.12.00 USE OF COMPLETED PORTIONS

The City 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 or such portions which may not have expired. Such taking possession and use shall not be deemed an 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 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 a claim for additional compensation or extension of time, in writing, to the City Engineer. The City Engineer will review the claim and determine its validity.

110.13.00 CUTTING AND PATCHING

The Contractor shall do all cutting, fitting, or patching of 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 reasonable implied by the plans.

110.14.00 CLEANING UP

Cleaning up shall be a continuing process from the start of work to final acceptance of the project. The Contractor shall, at all times, at Contractor's own expense and without further order keep property on which work is in progress free from accumulations of waste material or 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. Accumulation of waste materials that might constitute a fire hazard will not be permitted. Spillage from the Contractor's hauling vehicles on traveled public or private roads and parking areas shall be promptly cleaned up. Upon completion of the construction, the Contractor shall, at his own expense, remove all temporary structures, rubbish, and waste materials resulting from operations.

Upon failure of the Contractor to provide cleanup within 24 hours of being so directed by the Engineer in writing, the City, or an agent retained by the City, may complete the cleanup and the cost thereof plus 10% for handling shall be deducted from any payment due the Contractor.

110.15.00 CHANGES IN QUANTITY

The City reserves the right to increase or decrease quantities without limit or to omit portions of the work without invalidating said proposal or re-negotiating the unit bid price.

110.16.00 PERFORMANCE TESTING

Operating equipment and systems shall be performance tested in the presence of the City Engineer to demonstrate compliance with the specified requirements. Performance testing shall be conducted under the specified design operating conditions or under such simulated operating conditions as recommended or approved by the City Engineer. Such testing shall be scheduled with the City Engineer at least one (1) week in advance of the planned date for testing and include a factory representative on site.

110.17.00 SUBSTANTIAL COMPLETION DATE

The City Engineer may, at his/her sole discretion, issue a written notice of substantial completion for the purpose of establishing the starting date for specific guarantees, and to establish the date that the City will assume the responsibility for the cost of operating such portions of the project. Said notice shall not be considered as final acceptance of any portion of the work or relieve the Contractor from completing the remaining work within the specified time and in full compliance with the Contract Documents. All equipment contained in the work, plus all other components necessary to enable the City of Sisters to operate the facility in the manner that was intended, shall be complete including acceptable testing as specified in these Contract Documents on the substantial completion date.

The City shall have the right to exclude Contractor from the project after the date of substantial completion, but the City shall allow Contractor reasonable access to complete or correct remaining items of work.

111 PAYMENT

111.1.00 BASIS OF PAYMENT

In consideration of the faithful performance of all the covenants, stipulations, and conditions in these Contract Documents, the City 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 City Engineer, together with any amounts due for extra work not classified under the items listed in the Contractor's Proposal as provided in the paragraph "Extra Work" 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 City due to acts or omissions of the Contractor and for which the Contractor is liable under this Agreement.

111.2.00 PARTIAL PAYMENT

At least ten (10) days before the 25th of each month, but not more often than once a month, Contractor shall submit to City Engineer for review an application for payment filled out and signed by Contractor covering the work completed as of the date of the application

and accompanied by such data and schedules as City Engineer may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at the site or at another location agreed to in writing, the application for payment shall also be accompanied by such data, satisfactory to the City, as will establish City of Sisters title to the material and equipment and protect interest therein, including applicable insurance. Each subsequent application for payment may be required to include an affidavit of Contractor's obligations reflected in prior applications for payment.

Contractor warrants and guarantees that title to all work, materials and equipment covered by any application for payment, whether incorporated in the project or not, will pass to the City at the time of payment free and clear of all liens, claims, security interests and encumbrances.

City Engineer will, within ten (10) days after receipt of each application for payment, either indicate in writing, approval of payment and present the application to the City Finance Department, or return the application to Contractor indicating, in writing, reasons for refusing to approve payment. In the later case, Contractor may make the necessary corrections and resubmit the application.

The amount of said application for payment, after deducting five percent (5%) and all previous payments, shall be due and payable to the Contractor not more than thirty (30) days after the last day of said month. The five percent (5%) deducted, as above set forth, shall be withheld by the City 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 which may accrue against the City of Sisters because of some act or omission on the part of the Contractor.

Nothing contained in this article shall be construed to affect the right, hereby reserved, to reject the whole or any part of the aforesaid work should such work be later found not to comply with any of the provisions of the Contract Documents. All estimated quantities of work for which progress payments have been made are subject to review and correction on the final estimate. Payment by the City and acceptance by the Contractor of progress payments based on periodic estimates of quantities of work shall not, in any way constitute acceptance of the estimated quantities used as the basis for computing the amounts of the progress payments.

Furthermore, on all Agreements for the construction, reconstruction, maintenance or repair of any public work in the State of Oregon, The City will withhold 25 percent of any payment due the Contractor until the Contractor files with the City the signed Wage Certification Form certifying that the Contractor has paid not less than the prevailing rate of wages as required by ORS Chapter 279C.845 (7), as set forth in General Conditions.

111.3.00 CHANGE ORDERS

Payment or credit for any alterations covered by a Change Order shall be determined by one or a combination of methods set forth in 111.3.01, 111.3.02, or 111.3.03 below:

111.3.01 UNIT PRICES

If applicable, those unit prices stipulated in the Proposal or unit prices negotiated and mutually acceptable to the Contractor and City of Sisters.

111.3.02 LUMP SUM

A total sum for the work negotiated and mutually acceptable to the Contractor and City. Contractor's quotations for Change Orders shall be in writing and firm for a period of forty-five days. Any compensation agreed upon, and subsequently paid by the City for work defined in a Change Order shall be deemed to include all costs and expenses related to such work, including the costs and expenses of a direct, indirect, and consequential nature, or otherwise, and it is specifically understood and agreed that no additional compensation may be subsequently sought or charged by the Contractor for the work covered by the applicable Change Order.

The City's request for quotations on alterations to the work shall not be considered authorization to proceed with the work prior to the issuance of a formal Change Order, nor shall such request justify any delay in existing work.

111.3.03 FORCE ACCOUNT WORK

If the method of payment cannot be agreed upon prior to the beginning of the work, and the City or the City Engineer directs that the work be done by written Change Order or on a force account basis, then the Contractor shall furnish labor equipment, and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual cost of the following:

- A. Labor, including foremen, who are directly assigned to the force account work: (actual payroll cost, including wages, fringe benefits as established by negotiated labor agreements, labor insurance, and labor taxes as established by law). No other fixed labor burden will be considered unless approved in writing by the City of Sisters.
- B. Material delivered and used on the designated work, including sales tax, if paid for by Contractor or subcontractor.
- C. Rental, or equivalent rental cost of equipment, including necessary transportation for items having a value in excess of one hundred dollars (\$100). Equipment use approved by the Engineer will be paid at the rental rates given in the most current edition of the Rental Rate Blue Books for Construction Equipment ("Blue Book"), Volumes 1,2, and 3, published by Primedia Information, Inc., 1735 Technology Drive, Suite 410, San Jose, CA 95110-1313 (phone 800-669-3282). Equipment rental rates will be the maximum allowable rate.
- D. Additional bond, as required and approved by the City of Sisters.
- E. Additional insurance (other than labor insurance) as required and approved by the City of Sisters.

To costs under 111.3.03 FORCE ACCOUNT WORK, there shall be added the following fixed fees for the Contractor or subcontractor actually performing the work:

- 1. A fixed fee of fifteen percent (15%) added to the cost of Items A, B and C; and
- 2. A fixed fee of six percent (6%) added to the cost of items D and E above.
- 3. An additional fixed fee of ten percent (10%) shall be allowed the Contractor for the administrative handling of portions of the work that are performed by an approved subcontractor. No additional fixed fee will be allowed for the administrative handling of work performed by a subcontractor of a subcontractor unless by written permission from the City. The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, profit, and any other general expense.

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

For equipment under Item C above, rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further allowances will be made for those items, unless specific agreement to that effect is made.

The Contractor shall maintain records in such a manner as to provide a clear distinction between the direct costs of work paid for on a force account basis and the costs of other operations. The Contractor shall furnish the City Engineer report sheets in duplicate of each day's force account work no later than the working day following the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor, or other forces. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated.

Material charges shall be substantiated by valid copies of vendors' invoices for materials used in the alterations covered by Change Orders. Such invoices shall be submitted with the daily report sheets, or, if not available, they shall be submitted with subsequent daily report sheets. Said daily report sheets shall be signed by the Contractor or authorized agent.

To receive partial payments and the final payment for force account work, the Contractor shall submit in a manner approved by the City Engineer, detailed and complete documented verification of the Contractor's and any of subcontractor's actual current costs involved in the force account work pursuant to the issuance of an approved Change Order. Such costs shall be submitted within thirty (30) days after said work has been performed.

No payment will be made for work billed and submitted to the City Engineer after the thirty (30) day period has expired. No extra or additional work shall be performed by the Contractor, except in an emergency endangering life or property, unless in pursuance of a written Change Order.

111.4.00 CLAIMS

If the Contractor claims that any instructions involve extra cost under this Agreement, the Contractor shall give the City Engineer written notice thereof within forty-eight (48) hours after the receipt of such instructions, and in any event before proceeding to execute the work. If such notification is not given, or if the City Engineer is not afforded proper facilities by the Contractor for keeping strict account of actual cost, then the Contractor hereby agrees to waive the claim for such additional compensation. Such notice by the Contractor, and the fact that the City Engineer has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim.

Claims for additional compensation shall be made in itemized detail and submitted, in writing, to the City Engineer within ten (10) days following completion of that portion of the

work for which the Contractor bases a claim is found to be just. It shall be allowed and paid for as provided in the section covering Change Orders.

111.5.00 FINAL PAYMENT

To receive final payment, the Contractor must do the following:

1. Notify the City Engineer, in writing, that the Contractor has completed the work in accordance with the Contract Documents and request final payment.
2. Submit to the City of Sisters appropriate waivers of lien and claims for itself and all subcontractors and a signed affidavit, satisfactory to the City of Sisters, stating that so far as the contractor has knowledge or information, all accounts for materials, labor, and incidentals in connection with the work have been paid in full.
3. On agreements for public works, furnish to the City of Sisters a completed wage certification as required by ORS 279, as amended.
4. Provide required warranty letter and bond. (See Section #8 Development Provisions)

Within thirty (30) days of written notice from the Contractor that the work has been completed, the City Engineer shall conduct a final inspection of the work. If the work has been completed to the satisfaction of the City Engineer, he/she shall submit a certificate of acceptance of the completed work, together with a final estimate of the amount due the Contractor under this Agreement, less any amount to be withheld by the City to ensure guarantees, as may be provided in the Supplementary Conditions.

The City shall, within thirty five (35) days, pay to the Contractor all monies due under the conditions of the Agreement upon the following:

1. The City of Sisters acceptance of the City Engineer's final estimate.
2. The City of Sisters approval of the affidavit of the release of lien and claim.
3. Inspection and approval by all or any concerned public works of the State, of any county, municipality or political subdivision created by law, or Public Utility.

111.6.00 MATERIALS DELIVERED TO THE WORK SITE BUT NOT USED

Monthly progress payments will 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 City Engineer, in writing, ten (10) 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 City of Sisters for materials on the site, but not incorporated in the work, shall not be considered as acceptance by the City of Sisters and shall not relieve the Contractor from his/her responsibilities.

111.7.00 ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by the Contractor of the final payment shall release the City of Sisters and the City Engineer as agent of the City from all claims and all liability to the Contractor for all things done or furnished in connection with the work, and every act of the City and others relating to or arising out of the work. No payment, however, final or otherwise, shall operate to release the Contractor from obligations under these Contract Documents.

111.8.00 NO WAIVER OF RIGHTS

Neither the inspection by the City, through the City Engineer or any of City employees, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or City Engineer, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of these Contract Documents, or any power herein reserved to the City, or any right to damages herein, nor shall any waiver of any breach in this Agreement be held to be a waiver of any other or subsequent breach.

111.9.00 LITIGATION FEES AND EXPENSES

In the event suit or action shall be instituted to enforce any of the terms or conditions of the Agreement, the losing party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sums as the court may adjudge reasonable as attorney's fees in such suit or action, in both trial and appellate courts.

