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DIVISION I
GENERAL PROVISIONS

SECTION 101 - DEFINITION OF TERMS

101.01 - Definitions. Wherever the words, forms, abbreviations or phrases herein defined, or pronouns used in their stead, occur in these specifications, in the contract or in the advertisement of any document or instrument herein contemplated or to which these specifications apply, the intent and meaning shall be interpreted as follows:

A.A.S.H.T.O. - The American Association of State Highway and Transportation Officials.

ADVERTISEMENT - All of the legal publications pertaining to the work contemplated or under contract.

A.N.S.I. - The American National Standards Institute.

A.S.T.M. - The American Society of Testing and Materials.

AUTHORITY or E.M.A. - The Enid Municipal Authority, acting through its duly authorized representatives or agents.

A.W.W.A. - The American Water Works Association.

BIDDER - Any person or persons, partnership, company, firm or corporation acting directly through a duly authorized representative submitting a proposal for the work contemplated.

B.P.R. - The Bureau of Public Roads.

CALENDAR DAY - Every day shown on the calendar.

CHAIRMAN - Chairman of the Enid Municipal Authority (EMA) or Enid Economic Development Authority (EEDA).

CITY - City of Enid, Oklahoma, a Municipal Corporation, acting through its duly authorized representatives or agents.

CITY CLERK - The City Clerk of the City of Enid, Oklahoma, or his/her duly authorized assistants or agents.

CITY MANAGER - The Manager of the City of Enid, Oklahoma.

CONTRACT - The written agreement covering the performance of the work. The Contract includes the Advertisement and Notice to Contractors, Proposals, Bonds, Specifications, including Special Provisions, Plans or working drawings and any supplemental agreements pertaining to the work or materials therefor.

CONTRACTOR - The person or persons, partnership, company, firm or corporation entering into a contract for the execution of the work acting directly or through a duly authorized representative.

COUNCIL - The Council of the City of Enid, Oklahoma.

COUNSELOR - The Counselor of the Owner, or his duly authorized assistants or agents.

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DEVELOPER - The owner of a tract of land that has been subdivided into Lots, Blocks, streets and alleys having public improvements made in accordance with these specifications by private contract.

ENGINEER - The City Engineer or his duly authorized agents, engineers, assistants, inspectors, or superintendents, acting severally within the scope of the particular duties entrusted to them.

EXTRA WORK - Any work performed by the contractor not provided for by the plans.

FURNISH - To supply.

MAINTENANCE BOND - The approved form of security furnished by the contractor and his surety as a guarantee that he will maintain the work constructed by him in good condition for the period of time required.

MAYOR - The Mayor of the City of Enid, Oklahoma.

O.H.D. - Oklahoma Highway Department.

OWNER - The term "Owner" shall mean the contracting agency acting through its duly authorized governing body.

PERFORMANCE BOND - The approved form of security furnished by the contractor and his surety as a guarantee of good faith on the part of the contractor to execute the work in accordance with the plans, specifications and terms of the contract.

PLAN OR PLANS - All of the drawings pertaining to the contract and made a part thereof, including such supplemental drawings as the Engineer may issue from time to time, in order to elucidate other drawings or for the purpose of showing changes in the work as authorized under Subsection 104.04 or for showing details not shown thereon.

PROPOSAL - The written statement or statements duly filed with the City Clerk of the person or persons, partnership, company, firm or corporation proposing to do the work contemplated.

PROPOSAL FORM - The approved form on which the formal bids for the work are to be prepared and submitted.

PROPOSAL GUARANTY - The security, designated in the "proposal form" and in the advertisement, to be furnished by the bidder as a guarantee of good faith to enter into a contract with the owner and to execute the required bonds for the work contemplated after the work is awarded to him and as liquidated damages in event of failure to do so.

PROVIDE - To furnish and erect or install.

SPECIAL PROVISIONS - The special clauses setting forth conditions or requirements peculiar to the specific project involved, supplementing the Standard Specifications and taking precedent over any conditions or requirements of the Standard Specifications with which they are in conflict.

SPECIFICATIONS - The directions, provisions and requirements contained herein, together with the "Special Provisions" supplemental hereto, pertaining to the method and manner of performing the work or to the kinds, quantities or qualities of materials to be furnished under the contract, and methods of measurement and basis of payment.

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STATUTORY BOND - The approved form of surety set up and furnished by the contractor and his surety as a guarantee that he will pay, in full, all bills and accounts for material and labor used in the construction of the work, as provided by law.

SURETY OR SURETIES - The corporate body which is bound by such bonds as are required with and for the contractor, and engages to be responsible for the entire and satisfactory fulfillment of the contract and for any and all requirements as set out in the specifications, contract or plans.

THE WORK - All construction activities included with the scope of the plans and specifications, including the furnishing of labor, materials, tools, equipment and incidentals, to be performed by the contractor under the terms of the contract.

WORKING DAYS - Any day, other than a holiday recognized by the City and weekends, on which the approximate normal working forces of the contractor may proceed with regular work in a manner satisfactory to the Engineer for at least six (6) hours, toward completion of the work, unless work to be suspended for causes beyond the contractor's control, provided that weekends and holidays on which the contractor's forces do engage in regular work will be considered as a working day.

SECTION 102 - REQUIREMENTS FOR BIDDERS

The items noted in this section apply to and become part of the terms and conditions of the PROPOSAL as though they were included in their entirety. Any exceptions must be in writing.

All bidders shall have complied with the prequalification requirements of the City of Enid, Oklahoma.

102.01 - Content of Proposal Forms. Bids must be submitted on the PROPOSAL form. Said form will be provided by the owner and will state the description of the contemplated work and will contain a list of the items of work to be done or materials to be furnished upon which bid prices are asked. The proposal form will state the time limits for commencing and for completing the work and will provide for entering the amount of the proposal guaranty.

102.02 - Interpretation of Plans and Specifications. If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the plans, specifications or other proposed contract documents, he may submit to the Engineer a written request for an interpretation thereof. The person submitting such request will be responsible for any oral explanations or interpretations of the documents.

102.03 - Examination of Documents and Site of Work. Bidders are advised that the plans, specifications and estimate of the Engineer on file with the City Clerk shall constitute all the information which the owner will furnish. No other information given by the owner or any official thereof prior to the execution of the contract shall ever become a part of or change the contract, plans, specifications or estimates or be binding on the owner. Bidders are required, prior to submitting any proposal, to read carefully the specifications, the proposal, contract and bond forms; to examine carefully all estimates officially open for examination and all plans on file with the City Clerk; to visit the site of the work; to examine carefully local conditions; to inform themselves by their

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independent research of the difficulties to be encountered and judge for themselves of the accessibility of the work and all attending circumstances affecting the cost of doing the work or the time required for its completion and obtain all information required to make an intelligent proposal. Bidders shall rely exclusively upon their own estimates, investigations and other data which are necessary for full information upon which the proposal may be based. It is mutually agreed that submission of a proposal will be evidence that the bidder has made the examination and investigations required herein.

102.04 - Preparation and Filing of Proposal. Bids and affidavits must be filed with the City Clerk in sealed envelopes within the time limit for receiving proposals, as stated in the Solicitation for Bids which envelopes shall bear a legible notation thereon "PROPOSAL" and the name of the project. All blank spaces in the proposal forms shall be correctly filled in and the bidder shall state the prices, typewritten or written in ink, both in words and numerals, for which he proposed to do the work contemplated or furnish the materials required. All prices shall be distinct and legible.

If the proposal is submitted by an individual, his name must be signed by him or his duly authorized agent and his post office address given. If the proposal is submitted by a firm or partnership, the name and post office address of each member must be given and the proposal signed by a duly authorized member of the firm or partnership. If the proposal is made by a company or corporation, the company or corporate name and the State under the laws of which said company or corporation is chartered and the business address must be given and the proposal signed by an official or agent duly authorized. Powers of Attorney, authorizing agents or others to sign proposals must be properly certified and must be in writing and on file with the City Clerk.

102.05 - Proposal Guaranty. Proposals will not be considered unless the proposal filed with the City Clerk is accompanied by a bidder's bond or certified check in the required amount, made payable to the owner. The proposal guaranty shall be in the amount of five percent (5%) of the total amount of the bid unless otherwise provided in the advertisement or Special Provisions. The proposal guaranty is required as evidence of good faith and as a guarantee that if awarded the contract, the bidder will execute the contract and furnish the required bonds within the required time and as liquidated damages in the event of failure to do so.

102.06 - Withdrawal of Proposals. Permission will not be granted to withdraw or modify any proposal after it has been filed and before the time set for opening proposals. Request for non-consideration of proposals must be made in writing, addressed to the owner, and filed with the City Clerk before the time set for opening proposals. After other proposals are opened and read, the proposal for which withdrawal is properly requested will be returned unopened.

102.07 - Opening of Proposals. Proposals will be opened as stated in the "SOLICITATION FOR BIDS".

102.08 - Irregular Proposals. Any bid proposal that shows any omission, alteration of form, addition or condition not called for and any unauthorized alternate bid proposal shall be deemed irregular; however, the owner reserves the right to waive technicalities and make the award in the best interest of the owner.

102.09 - Rejection of Proposals. The owner reserves the right to reject any or all proposals, and all proposals submitted are subject to this reservation. Proposals shall be rejected for any of the following specific reasons:

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- (a) Proposal received after the time limit for receiving proposals.
- (b) Proposal prices obviously unbalanced.
- (c) Total proposal price above the Engineer's estimate of total cost.
- (d) Proposals that are incomplete insofar as the Non-Collusion Affidavit, Business Relationship Affidavit, required signatures, or containing material irregularities.
- (e) Bidder not prequalified unless prequalification is waived by the owner.

102.10 - Disqualification of Bidder. Bidders will be disqualified and their proposals not considered for any of the following specific reasons:

- (a) Where more than one proposal for an individual, firm, partnership or corporation is filed under the same or different names and where such proposals are not identical in every respect.
- (b) Reasonable grounds for believing that any bidder is interested in more than one proposal for the work contemplated or materials to be furnished.
- (c) Reason for believing that collusion exists among the bidders.
- (d) The bidder being in arrears on any existing contracts, interested in any litigation, against the City or E.M.A. or having defaulted on a previous contract.
- (e) Lack of competency, as revealed by the financial statement, experience and equipment questionnaires, etc.
- (f) Uncompleted work which, in the judgement of the owner, will hinder or prevent the prompt completion of additional work, if awarded.

SECTION 103 - AWARD AND EXECUTION OF CONTRACT

103.01 - Consideration of Proposals. After the proposals are opened, those proposals containing unit prices will be tabulated for comparison on the basis of the quantities shown in the approximate estimate. Until the final award of the contract, the owner reserves the right to reject any or all proposals, to waive technicalities and to advertise for new proposals or proceed to do the work otherwise when the best interests of the owner will be promoted thereby.

103.02 - Award of Contract. The owner reserves the right to withhold the award of the contract for sixty (60) days from the date of opening the proposals and no award will be made until the necessary investigations are made as to the responsibility of the low bidder. No contract will be awarded until at least two (2) days after the opening of proposals. The awarding of the contract shall give the bidder no right of action or claim against the owner upon such contract until the execution of the contract shall have been completed and the contract delivered to the contractor. The owner reserves the right to award all or any portion or portions of the work.

103.03 - Return of Proposal Guaranty. As soon as the proposal prices have been compared and an award made, the owner may, at its discretion, return the proposal guaranties accompanying proposals which in its judgement would not be considered in making the award. Should the awarding of the contract be delayed more than thirty (30) days, all bidders' checks will be returned unless such delay is from causes beyond the control of the owner, and in such event the proposal and bidder's check, of any bidder, will be returned at the bidder's option.

103.04 - Surety Bonds. With the execution and delivery of the contract, the contractors shall furnish and file with the owner in the amounts herein required, the following surety bonds:

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- (a) A good and sufficient Performance Bond in an amount equal to one hundred (100) percent of the approximate total amount of the contract, guaranteeing the full and faithful execution of the work and performance of the contract and for the protection of the owner and all property owners interested against any damage by reason of the negligence of the contractors, or the improper execution of the work or the use of inferior material.
- (b) A good and sufficient Statutory Bond in an amount equal to one hundred (100) percent of the approximate total amount of the contract, guaranteeing payment for all labor, materials and equipment used in the construction of the improvement.
- (c) A good and sufficient Maintenance Bond guaranteeing the maintenance in good condition of such improvement for a period and in the amount specified in the contract, proposal, and solicitation for bids.

No surety will be accepted who is now in default or delinquent on any bond or who is interested in any litigation against the owner. All bonds shall be made on forms furnished by the owner and shall be executed by surety companies licensed to do business in the State of Oklahoma and acceptable to the owner. Each bond shall be executed by the contractor and the surety.

Should any surety on the contract be determined unsatisfactory at any time by the owner, notice will be given to the contractor to that effect and the contractor shall forthwith substitute a new surety or sureties satisfactory to the owner. No payment will be made under the contract until the new surety or sureties, as required, have qualified and been accepted by the owner. The contract shall not be operative nor shall any payments be due until approval of the bonds has been made by the owner.

103.05 - Execution of Contract. The person or persons, partnerships, company, firm or corporation to whom a contract is awarded shall within four (4) days after notice to enter into contract shall sign the necessary agreements entering into the required contract with the owner and execute and deliver required bonds.

No contract shall be binding on the owner until it has been approved by the Counselor, executed by the owner and delivered to the contractor.

103.06 - Failure to Execute Contract. Upon failure of the bidder to execute the required bonds or to sign the required contract within four (4) days after the notice to enter into contract will be considered to have abandoned his proposal and the owner may annul the award.

SECTION 104 - SCOPE OF WORK

104.01 - Intent of Plans and Specifications. The intent of the plans and specifications is to prescribe a complete work or improvement which the contractor undertakes to do, in full compliance with the plans, specifications, special provisions, proposal and contract. The contractor shall do all work as provided in the plans, special provisions, specifications, proposal and contract and shall do such additional extra and incidental work as may be considered necessary to complete the work in a satisfactory and acceptable manner. He shall furnish all labor, materials, tools, equipment and incidentals necessary to the prosecution of the work, unless otherwise specified.

104.02 - Special Provisions. Should any work or any conditions which are not thoroughly or satisfactorily stipulated or covered by the general or standard specifications be anticipated on any proposed work, "Special Provisions" for such work may be prepared and shall be considered as a part of the specifications and contract.

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104.03 - Increased or Decreased Quantities of Work. The owner reserves the right to alter the quantities of the work to be performed or to extend or shorten the improvement at any time when and as found necessary, and the contractor shall perform the work as altered, increased or decreased, at the contract unit prices.

No allowance will be made for any change in anticipated profits nor shall such changes be considered as waiving or invalidating any condition or provision of the contract.

This provision shall not be construed as to permit the contractor to perform additional work not included or contemplated in the original proposal.

104.04 - Alterations of Plans and Specifications. The owner reserves the right to make such changes in the plans and in the character of the work as may be necessary or desirable to insure completion of the work in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the contract.

104.05 - Extra Work. When any work is necessary to the proper completion of the project for which no prices are provided in the proposal or contract, the contractor shall do such work, but only when and as ordered in writing by the Engineer and with the prior approval of the owner.

Payment for extra work will be made as hereinafter provided.

104.06 - Final Cleaning Up. Upon completion of the work and before acceptance and final payment will be made, the Contractor shall clean and remove from the site of the work surplus and discarded materials, temporary structures, stumps or portions of trees and debris of any kind.

He shall leave the site of the work in a neat and orderly condition. Waste materials removed from the site of the work shall be disposed of at locations satisfactory to the Engineer.

SECTION 105 - CONTROL OF THE WORK AND MATERIALS

105.01 - Authority of Engineer. All work shall be done under the supervision of the Engineer and to his satisfaction. He shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress of the work, interpretation of the plans and specifications, acceptable fulfillment of the contract, compensation, mutual rights between contractors under these specifications and suspension of work. The Engineer shall have the right to establish any sequence or priority of operation in the interest of desirable cooperation with other work. He shall determine the amount and quality of work performed and materials furnished and his decisions and estimates shall be final. His estimate in such event shall be a condition precedent to the right of the contractor to receive money due him under the contract.

The authority of the Engineer shall not be construed to include the authority to waive, revise or modify specifications as herein set forth either as to kind, type of quality of materials or manner or quality of construction.

105.02 - Detail Shop Working Drawings Furnished by Contractor. The contractor shall submit to the Engineer for approval, such additional shop and working drawings of structures or equipment as may be required, and, prior to the

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approval of such drawings by the Engineer, any work done or materials ordered shall be at the contractor's risk. The contract price shall include the cost of furnishing such drawings.

105.03 - Existing Structures Not Shown on Plans. The plans show the location of certain existing surface and subsurface structures. The owner assumes no responsibility for failure to show any or all structures on the plans or to show them in their exact location. It is mutually agreed such failure will not be considered sufficient basis for claims for extra work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate substantial changes in the lines or grades or requires the building of a special structure, provisions in these specifications for "Extra Work" will apply.

105.04 - Coordination of Plans, Specifications, Proposal and Special Provisions. The plans, these specifications, the proposal, special provisions and all supplementary documents are intended to describe a complete work and are essential parts of the contract. A requirement occurring in any of them is binding. In case of discrepancies, figured dimensions shall govern over scaled dimensions; plans shall govern over specifications; special provisions shall govern over both general and standard specifications, and the quantities shown on the plans shall govern over those shown in the proposal. The contractor shall take no advantage of any apparent error or omission in the plans and specifications, and the Engineer shall be permitted to make such corrections or interpretations as may be deemed necessary for the fulfillment of the intent of the plans and specifications. In the event the contractor discovers any apparent error or discrepancy, he shall immediately call such error or discrepancy to the attention of the Engineer.

105.05 - Cooperation of Contractor. Three sets of plans and specifications will be furnished the contractor as follows: one office copy, one for the field superintendent, and one copy for job use. The contractor, however, shall have a set of plans and specifications available at all points where a separate construction crew is working.

The contractor shall give to the work the consistent attention necessary to facilitate the program thereof, and he shall cooperate with the Engineer and his inspectors and with other contractors in every way possible. The contractor shall provide a competent superintendent on the work at all times who is fully authorized as his agent on the work. Such superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the Engineer or his representative.

The contractor and his superintendent shall provide all reasonable facilities to enable the Engineer and his inspectors to inspect the workmanship and materials entering into the work.

105.06 - Construction Stakes. (NA)

105.07 - Measurements. Before ordering any material or doing any work, the contractor shall verify all measurements involved and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated on the drawings; and any difference which may be found shall be submitted to the Engineer, for consideration before proceeding with the work.

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105.08 - Source of Supply and Quality of Materials. The materials used on the work shall meet all quality requirements of the contract. The contractor shall not start delivery of materials until the Engineer has approved quality and source of supply. The contractor shall furnish approved materials from other sources if, for any reason, the product from any source at any time before commencing or during the prosecution of the work proves unacceptable.

When the contractor has an option of using one of two or more materials or products as covered by a bid item or lump sum bid on work in the proposal, the successful bidder shall advise the Engineer in writing prior to execution of the contract the specific materials or product that will be used on the project.

105.09 - Materials and Workmanship. The contractor shall submit samples of materials, finish, appliances, etc., when required by the Engineer, and all such samples must be approved by the Engineer in writing before the work is executed and all work shall conform in all respects to the approved samples. Any work which does not conform to the approved samples will be rejected, and shall be removed and replaced by work that does so conform.

105.10 - Samples and Tests of Materials and Workmanship. Where, in the opinion of the Engineer or called for on the plans or in the specifications, tests of materials are necessary, such tests shall be made by, and at the expense of the contractor unless otherwise provided. Tests and materials unless otherwise specified, are to meet the requirements of the latest standards of A.A.S.H.T.O., A.S.T.M., A.W.W.A. and A.N.S.I. The contractor shall provide such facilities as the Engineer may require for collecting and forwarding samples and shall not use the materials represented by the samples until tests have been made and approved by the Engineer or designated testing laboratory. The contractor in all cases shall furnish the required samples without charges. All tests shall be made by a laboratory designated by the owner. A schedule of tests will be furnished by the owner prior to bidding.

A satisfactory test is defined as being a test which shows that the quality of the materials or workmanship meets the requirements of the specifications. Where tests reveal that the quality of the materials or workmanship does not meet the requirements of the specifications, additional test shall be made as directed by the Engineer until the number of satisfactory tests called for in the schedule have been made. The reports of the tests shall constitute the evidence referred to above.

The Engineer may order tests in addition to the number provided for in the schedule to be made if, in his opinion, such additional tests are necessary. The

cost of all tests ordered, in addition to the number of satisfactory tests provided for in the schedule, which show that the materials or workmanship conform to the specifications shall be paid for by the owner.

All such additional tests which reveal that the materials or workmanship do not conform to the specifications shall be paid for by the contractor. Standard density or standard proctor density as used in the specifications shall be the maximum density as determined by A.A.S.H.T.O. T99, method C or D, unless otherwise stipulated. In-place density shall be determined by A.A.S.H.T.O. T205 (Rubber Balloon) or A.A.S.H.T.O. T238 (Nuclear) or other approved test methods on in-place density that correlate satisfactory.

105.11 - Materials Certifications. The contractor shall be responsible for obtaining all certifications and arranging for their delivery to the Engineer as required by these specifications.

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Certifications shall be prepared by the manufacturer, signed by a responsible representative of the company which issues the certification and shall state that the materials meet the applicable specifications. The official company title of the signer must be readily shown immediately beneath his signature.

All certifications shall be furnished in duplicate and each copy shall show the following information:

Project number
Name of contractor
Identification markings on shipment

Whenever a certification is required as part of a material specification, such material may be accepted on the basis of certification provided that all applicable requirements are met and that visual inspection at destination shows the workmanship and condition of the material to be satisfactory.

All material furnished under certification shall be tagged, stenciled, stamped or otherwise marked with a lot number, heat number, order number or other appropriate identification number which can be readily recognized and checked against the certification. Material accepted on certification shall not be incorporated in the work until the certificates have been approved by the Engineer.

105.12 - Owner - Furnished Materials. The contractor shall furnish all materials required to complete the work, except those specified to be furnished by the owner. Material furnished by the owner will be delivered or made available to the contractor at the points specified in the special provisions or on the plans.

The cost of handling and placing all materials after they are delivered to the contractor shall be considered as included in the contract price for the items in connection with which they are used.

The contractor will be held responsible for all materials delivered to him, and deductions will be made from any monies due him to make good any shortages and deficiencies, from any cause and for any damage which may occur after such delivery, and for any demurrage charges.

105.13 - Storage of Materials. Materials shall be stored so as to insure the preservation of their quality and fitness for the work. Stored materials shall be located so as to facilitate prompt inspection.

105.14 - Inspection. The contractor shall furnish the Engineer with every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and intent of the plans and specifications. If the Engineer requires, the contractor shall at any time before acceptance of the work, remove and uncover such portions of the finished work as may be directed, for inspection. After inspection, the contractor shall restore said portion of the work to the condition required by the specifications.

Should the work thus exposed on examination prove acceptable, the cost of uncovering or removing and the replacing of the covering or making good the parts removed will be paid for as "Extra Work". Should the work so exposed or examined prove unacceptable, the cost of covering or removing and the replacing of the covering or making good of the parts removed shall be at the contractor's expense, provided that where ample notice of the intention to complete or cover up the work was not given by the contractor to the Engineer, then the cost of the uncovering or removing and the replacing of the covering or making good of the

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parts removed shall be borne by the contractor regardless of whether or not the work examined proved acceptable or unacceptable. Any work done or materials used without suitable supervision or inspection by the Engineer may be ordered removed and replaced at the contractor's expense.

105.15 - Removal of Defective and Unauthorized Work. All work which has been rejected or condemned shall be repaired, or, if it cannot be satisfactorily repaired, it shall be removed and replaced at the contractor's expense. Defective materials shall be removed immediately from the site of the work.

Work done without lines and grades having been given; work done beyond the lines or not in conformity with the grades shown on the plans or as given, save as herein provided; work done without proper inspection or any extra or unclassified work done without written authority and prior agreement in writing as to prices, will be done at the contractor's risk and will be considered unauthorized, and, at the option of the Engineer, may not be measured and paid for and may be ordered removed at the contractor's expense.

Upon the failure of the contractor to satisfactorily repair or to remove and replace, if so directed, any rejected, unauthorized or condemned work or materials immediately after receiving notice from the Engineer, the Engineer shall, after giving written notice to the contractor, have the authority to cause defective work to be remedied or removed and replaced or to cause unauthorized work to be removed and to deduct the cost thereof from any compensation due or to become due the contractor. If the Engineer and owner deem it expedient to correct work injured or done not in accordance with the contract, an equitable deduction from the contract price shall be made therefor.

105.16 - Correction of Work After Final Payment. Neither the final certificate nor any provision in the contract documents shall relieve the contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of acceptance by the owner. The owner shall give notice of observed defects with reasonable promptness.

105.17 - Final Inspection. The Engineer shall make final inspection of all work included in the contract or any portion thereof as soon as practicable after the work is completed and ready for acceptance. If the work is not acceptable to the Engineer at the time of such inspection, he shall inform the contractor as to the particular defects to be remedied before final acceptance can be made.

SECTION 106 - LEGAL RELATION AND RESPONSIBILITY TO THE PUBLIC

106.01 - Laws To Be Observed. The contractor shall, at all times, observe and comply with all Federal and State laws and City ordinances and regulations which in any manner affect the conduct of the work and shall observe and comply with all orders and decrees which exist at the present or which may be enacted later, of bodies or tribunals having jurisdiction or authority over the work, and no plea of misunderstanding or ignorance thereof will be considered. The contractor and his surety shall defend, indemnify and save harmless the owner and all its offices, agents, employees and servants against any claims or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by himself or his employees.

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106.02 - Permits and Licenses. The contractor shall procure all permits and licenses, pay all charges or fees, and give notices necessary and incidental to the due and lawful prosecution of the work except those established by ordinance in connection with paving removal and replacement.

106.03 - Patented Devices, Materials and Processes. If the contractor is required or desires to use any design, device, material or process covered by letters, patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. It is mutually understood and agreed that without exception the contract prices shall include all royalties or costs arising from patents, trademarks and rights in any way involved in the work. The contractor and the surety shall defend, indemnify and save harmless the owner and all its officers, agents and employees from all suits, actions or claims of any character, name and description brought for on account of infringement or alleged infringement by reason of the use of any such patented design, device, material or process or any trademark or copyright used in connection with the work agreed to be performed under this contract, and shall indemnify the owner for any cost, expense or damage which it may be obligated to pay by reason of any action or actions, suit or suits which may be commenced against the owner for any such infringement or alleged infringement at any time during the prosecution or after completion of the work contracted for herein. It is mutually agreed that the owner may give written notice of any such suit to the contractor, and thereafter the contractor shall attend to the defense of the same and save and keep harmless the owner from all expenses, counsel fees, cost liabilities, disbursements, recoveries, judgements and executions in any manner growing out of, pertaining to or connected therewith.

106.04 - Sanitary Provision. The contractor shall establish and enforce among his employees such regulations in regard to cleanliness and disposal of garbage and waste as will tend to prevent the inception and spread of contagious or infectious disease and to effectively prevent the creation of a nuisance about the work or any property, either public or private and such regulations as are required by the Engineer shall be put into effect immediately by the contractor.

The necessary sanitary conveniences for the use of laborers on the work property secluded from public observation shall be constructed and maintained by the contractor and their use shall be strictly enforced by the contractor. All sanitary laws and regulations of the City and of the State of Oklahoma shall be strictly complied with.

106.05 - Public Convenience and Safety. Materials store about the work shall be so placed and the work shall at all times be so conducted as to cause no greater obstruction to the traveling public than is considered necessary by the Engineer.

The contractor shall make provision, by bridges or otherwise, at all cross streets, highways, sidewalks and private driveways for the free passage of vehicles and pedestrians, provided that, where bridging is impracticable or unnecessary, in the opinion of the Engineer, the contractor may make arrangements satisfactory to the Engineer for the diversion of traffic and shall, at his own expense, provide all materials and perform all work necessary for the construction and maintenance of roadways and bridges for the diversion of traffic. Sidewalks must not be obstructed unless by special permission of the Engineer. Neither the materials excavated nor the construction materials or plant used in the construction of the work shall be placed so as to endanger the work or prevent free access to all fire hydrants, water valves, gas valves, manholes for electric, telephone, telegraph or traffic signal conduits, sewers or fire alarm or police call boxes in the vicinity. The owner reserves the right to remedy any neglect on the part of the contractor as regards the public convenience and safety which may come to its attention, after twenty-four (24) hours notice in writing to the contractor, save in cases of emergency when it

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shall have the right to remedy any neglect without notice and, in either case, the cost of such work done by the owner shall be deducted from monies due or to become due the contractor. The contractor shall notify the Enid Fire Department, Enid Police Department and Enid Ambulance Services when any street is closed or obstructed or opened from previously being closed for the performance of this contract and when directed by the Engineer shall keep any street or streets in condition for unobstructed use by emergency service equipment.

When the contractor is required to construct temporary culverts or bridges or make other arrangements for crossing over ditches or streams, his responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

106.06 - Privileges of Contractor in Streets, Alleys or Right-of-Way. For the performance of the contract, the contractor will be permitted to occupy such portions of streets or alleys, other public places or other right-of-way as provided for in the ordinances of the City, as shown on the plans or as permitted by the Engineer. A reasonable amount of tools, materials and equipment for construction may be stored in such space but not more than is necessary to avoid delay in the construction. Excavated and waste materials shall be piled or stacked in such a way as not to interfere with spaces that may be designated to be left free and unobstructed, nor inconvenience occupants of adjoining property.

Other contractors of the E.M.A. and the City may, for all purposes required by their contracts, enter upon the work and premises used by the contractor, and the contractor shall give to other contractors of the E.M.A. and City, all reasonable facilities and assistance for the completion of the adjoining work. Any additional grounds desired by the contractor for his use shall be provided by him at his own expense.

106.07 - Rights of Various Interests. Whenever work being done by the City's forces is contiguous to work being covered by these specifications, the contractor shall be responsible to insure that the City's work is complete before progressing with his portion of work.

106.08 - Railway Crossings. When the work encroaches upon the right-of-way of any railway, the owner will secure for the contractor all the necessary contracts, easements or authority to enter upon such right-of-way for the prosecution and completion of the work. Where railway tracks are to be crossed, the railway company, if it elects to do so, will construct the necessary bridges, trestles, cribs or other structures for the safe operation of trains or cars across any excavation during the time of construction of the work, and the cost of construction of such bridges, trestles, cribs or other structures shall be paid to the railway company by the contractor together with the necessary cost of any supervision or other incidental expenses which may be required by the railway company while the work is in progress on the right-of-way of the railway company, and all such costs shall be taken into consideration by the contractor, in submitting proposals. The contractor shall take such special precautions for the safety of the work and the traveling public as may be necessary by sheeting, bracing and thoroughly supporting the sides of any excavation and supporting and protecting any adjacent structures.

106.09 - Barricades and Warning Signs. Where work is carried on in or adjacent to any street, alley, or public place, the contractor shall at his own expense furnish and erect such barricades, fences, lights and warning signs, shall provide such watchmen and shall take such other precautionary measures for the protection of persons or property and of the work as are necessary. Barricades shall be painted white or yellow, so as to be visible at night. The paint shall be renewed as often as necessary to keep the barricades substantially covered.

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From sunset to sunrise the contractor shall furnish and maintain at least one (1) light at each barricade. A sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work under construction.

The contractor shall furnish watchmen in sufficient numbers to protect any new work. Failure to comply with this requirement will result in the Engineer shutting down the work until the contractor shall have provided the necessary protection.

The contractor will be held responsible for all damage to the work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence of such damage is found prior to acceptance, the Engineer may order the damaged portion immediately removed and replaced by the contractor at his expense, if, in the opinion of the Engineer, such action is justified. The contractor's responsibility for the maintenance of barricades, signs and lights and for providing watchmen shall not cease until the project shall have been accepted by the owner.

All barricades, warning signs, lights, temporary signals, and other protective devices must conform with the Manual on Uniform Traffic Control Devices for Streets and Highways as adopted by A.A.S.H.T.O. and the Federal Highway Administration.

106.10 - Use of Explosives. Should the contractor elect to use explosives to loosen rock or for any other purpose in the prosecution of the work, he shall obtain the required permits and the written permission of the Engineer before any blasting is done, but neither the issuance of said permits, the granting of said permission nor any other act, requirement or condition contained in these specifications, nor any order, direction or approval given by the Engineer or any other official or employee of the owner shall be construed as requiring or directing the use of any explosive or as accepting any liability for any injury or damage to persons or property resulting from such usage. No blasting shall be done unless an inspector is present and the contractor shall notify the Engineer when he is ready to begin any blasting work. All necessary precautions shall be taken by the contractor as required by the ordinances of the City or the laws of the State of Oklahoma relative to blasting and the necessary provisions shall be made for the protection of the new work and all blasting shall be so conducted as not to endanger persons or property. Only sufficient quantity of explosives necessary for the immediate day's work shall be kept on hand by the contractor. Storage of caps, exploders and explosives shall be done strictly in compliance with the orders of the Engineer and the ordinances of the City. The contractor shall be responsible for and shall make good any damage caused by blasting or accidental explosions.

The contractor shall notify the proper representatives of any public service corporation, any company or individual not less than eight (8) hours in advance of any blasting which might cause damage to their or his property along or adjacent to the work. Wherever explosives are stored, they shall be kept in a safe secure manner and all storage places shall be plainly marked "Dangerous Explosives", and shall be under the care of a competent watchman at all times.

106.11 - Protection and Restoration of Property. The contractor shall not enter upon private property for any purpose without first obtaining permission and he shall be responsible for the preservation of and shall use every precaution necessary to prevent damage to all trees, fences, culverts, bridges, pavements, driveways, sidewalks, etc., to all water, sewer, gas, or electric lines or appurtenances thereof and to all other public or private property along or adjacent to the work. The contractor shall notify the proper representatives of

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any public service corporation, of any work which might damage or interfere with the operation of their or his property, along or adjacent to the work. He shall be responsible for all damage or injury to property of any character resulting from any act, omission, neglect or misconduct in the manner or method of executing the work or due to his non-execution of the work or at any time due to defective work or materials, and said responsibility shall not be released until the work shall have been completed and accepted. When and where any direct or indirect damage or injury is done to public or private property on account of any act, omission, neglect or misconduct in the execution of the work in consequence of the non-execution thereof on the part of the contractor, he shall restore at his expense such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring as may be directed or he shall make good such damage or injury in an acceptable manner.

In case of the failure on the part of the contractor to restore such property to make good such damage or injury, the Engineer may, upon forty-eight (48) hours written notice, under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary and the cost thereof will be deducted from any monies due or to become due the contractor under his contract.

106.12 - Protection and Preservation of Land Monuments and Property Line Marks. The contractor shall protect carefully from disturbance or damage all land monuments, iron pins or other markers which establish property or street lines, provided that where such monuments or markers must, of necessity, be disturbed or removed in the performance of the contract, the contractor shall first give ample notice to the Engineer, so that he may witness or reference in such monuments or markers. Should the contractor disturb, remove or damage any established land monument, property or street line mark without first giving the Engineer ample notice, the Engineer may, at his option, deduct the cost of re-establishing such monuments or marks from any monies due or to become due the contractor.

106.13 - Responsibility for Damage Claims. The contractor and his surety shall defend, indemnify and save harmless the owner and all its officers, agents and employees from all suits, action or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property by or from the said contractor or his employees or by or in consequence or any negligence in safeguarding the work or through the use of unacceptable materials in constructing the work or by or on account of any act or omission, neglect or misconduct of the said contractor or by or on account of any claim or amounts recovered by any infringement of patent, trademark or copy right, or from any claims or amounts arising or recovered under the Workman's Compensation Law or any other law, ordinance, order or decree and so much of the money due the said contractor under and by virtue of his contract as shall be considered necessary by the owner may be retained for the use of the owner or in case no money is due, his surety shall be held until such suits or suit, action or actions, claim or claims for injury or damage as aforesaid shall have been settled and satisfactory evidence to that effect furnished to the owner.

106.14 - Contractor's Claim for Damages. Should the contractor claim compensation for any alleged damage by reason of the acts or omissions of the owner, he shall within ten (10) days after the sustaining of such damage, make a written statement to the Engineer setting out in detail the nature of the alleged damage. On or before the 25th day of the month succeeding that in which any such damage is claimed to have been sustained, the contractor shall file with

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the Engineer an itemized statement of the details and amount of such damage and upon request shall give the Engineer access to all books of account, receipts, vouchers, bills of lading and other books or papers containing any evidence as to the amount of such damage. Unless such statement shall be filed as herein required, the contractor's claim for compensation shall be waived and he shall not be entitled to payment on account of any such damage.

106.15 - Public Utilities and Public Property to be Changed. In case it is necessary to change or move the property of any owner of a public utility, such owner will, upon proper application by the contractor, be notified by the Engineer to change or move such property within a specified time, and the contractor shall not interfere with such property until ordered so to do by the Engineer. The right is reserved to the owner of public utilities to enter upon the limits of the contract for the purpose of making such repairs or changes of their property that may be necessary by performance of the contract. The City shall have the privilege of entering upon the limits of the contract for the purpose of repairing or relaying sewer and water lines and appurtenances, repairing culverts or storm drains, and for making other repairs, changes or extensions to any City property.

106.16 - Temporary Sewer and Drain Connections. When existing sewers have to be taken up or removed, the contractor at his own expense shall provide and maintain temporary outlets and connections for all private or public drains, sewers or sewer inlets. He shall also take care of all sewage and drainage which will be received from these drains, sewers and sewer inlets; and for this purpose he shall provide and maintain at his own expense adequate pumping facilities and temporary outlets or diversions. He shall construct such through, pipe or other structures necessary and be prepared at all times to dispose of drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing sewers and connections shall be kept in service and maintained under contract, save where specified or ordered to be abandoned by the Engineer. All water or sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the work under construction will be adequately protected.

106.17 - Arrangement and Charge for Water Furnished by the City. If the contractor desires to use City water, he shall make arrangements through the City of Enid Customer Service Department and shall pay all deposits and rates established by City ordinance for such service.

106.18 - Use of Fire Hydrants. The contractor or his employees shall not open, turn off, interfere with, attach pipe or hose to or connect anything with any fire hydrant, stop valve or stop cock or tap any water main belonging to the City, unless authorized to do so by the Customer Service Department.

106.19 - Use of a Section or Portion of the Work. Whenever in the opinion of the Engineer any portion of the work of any structure is in suitable condition, it may be put into use by the written order of the Engineer and such usage shall not be held to be in any way acceptance of said work or structure or any part thereof or as a waiver of any of the provisions of these specifications or contract. Pending final completion and acceptance of the work, all necessary repairs and renewals on any section of the work so put into use due to defective material or workmanship, to natural causes other than ordinary wear and tear, or to the operations of the contractor shall be performed by and at the expense of the contractor.

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106.20 - Contractor's Responsibility for the Work. Until written acceptance by the Engineer as provided for in these specifications, the work shall be under the charge and care of the contractor, and he shall take every necessary precaution to prevent injury or damage to the work or any part thereof by the action of the elements or from any other cause whatsoever, whether arising from the execution or from the non-execution of the work. The contractor shall rebuild, repair, restore, and make good, at his own expense, all injuries or damage to any portion of the work occasioned by any of the above causes before acceptance.

106.21 - Personal Responsibility of Public Officials. In carrying out any of the provisions contained herein or in exercising any power or authority granted to him by the contract, there shall be no liability upon the Engineer or his authorized assistants, either personal or as officials of the owner, it being understood that in such matters he acts as the agent and representative of the owner.

106.22 - Waiver of Legal Rights. Inspection by the Engineer or by any of his duly authorized representatives, any order, measurement, or certificate by the Engineer, any order by the owner for the payment of money, any payment for or acceptance of any work or any extension of time or any possession taken by the owner, shall not operate as a waiver of any provisions of the contract or any power therein provided. Any waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach. The owner reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the contract and specifications.

The owner reserves the right to claim and recover by process of law sums as may be sufficient to correct any error or errors or make good any deficiency in the work resulting from such error or deficiency, dishonesty or collusion discovered in the work after the final payment has been made.

106.23 - Contractor's Insurance. The contractor shall not commence work under this contract until he has obtained all insurance required under these specifications and such insurance has been approved by the owner, nor shall the contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

106.24 - Compensation and Death Liability Insurance. The contractor shall maintain during the life of this contract Workmen's Compensation Insurance as prescribed by the laws of the State of Oklahoma and Employer's Liability Insurance in the amount not less than **One Hundred Thousand Dollars** (\$100,000.00) for all his employees at the site of the project, and, in case any work is sublet the contractor shall require subcontractors similarly to provide Workmen's Compensation and Employer's Liability Insurance for all the latter's employees, unless such employees are covered by the protection afforded by the contractor. In the event any class of employees engaged in hazardous work performed under this contract at the site of the project is not protected under this insurance heretofore mentioned, the contractor shall provide, and shall cause each subcontractor to provide, adequate insurance for the protection of his employees not otherwise protected.

106.25 - Public Liability and Property Damage Insurance.

- (a) The contractor and/or subcontractor shall maintain during the life of this contract such Public Liability and Property Damage Insurance as will protect him from claims for damages for bodily injury, including accidental

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death, as well as from claims from property damages, which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be as follows:

Bodily Injury Liability and Property Damage Liability: Limits shall be carried in the amounts of not less than \$300,000.00 for any claim or to any claimant who has more than one claim for loss arising out of a single accident or occurrence; and not less than \$300,000.00 to any claimant for his claim for any other loss arising out of a single accident or occurrence; and not less than \$1,000,000.00 for any number of claims arising out of a single occurrence or accident.

- (b) Contractor shall provide Owner's Protection Liability Insurance with this owner as the named insured, and the Engineers as additional insured, to protect the owner and Engineers against claims arising out of operations of contractors and other independent contractors, as well as omissions of supervisory acts of the owner and Engineers in connection with the performance of the contract covered by these specifications in the following minimum accounts:

Bodily Injury Liability and Property Damage Liability: Limits shall be carried in the amounts of not less than \$300,000.00 for any claim or claimant who has more than one claim for loss arising out of a single accident or occurrence; and not less than \$300,000.00 to any claimant for his claim for any other loss arising out of a single accident or occurrence; and not less than \$1,000,000.00 for any number of claims arising out of a single occurrence or accident.

- (c) The policies of insurance shall be executed by an insurance or indemnity carrier authorized to do business in the State of Oklahoma.
- (d) Before awarding a contract, the owner will be furnished a binder or certificate of insurance showing the coverage to be in effect.

106.26 - Proof and Carriage of Insurance. The contractor shall furnish the owner with satisfactory proof of carriage of the insurance required.

106.27 - Liens. Neither the final payment or any part of the retained percentage shall become due until the contractor, if required, shall deliver to the owner complete release of all liens arising out of this contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all labor and material for which a lien could be filed; but the contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the owner, to indemnify him against any lien. If any lien remains unsatisfied after all payments are made, the contractor shall refund to the owner all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

The owner reserves the right to satisfy itself through any other means that all bills and accounts for materials and labor have been paid by the contractor before final payment is made.

106.28 - Transportation Tax. Under provisions of Section 3475(b) of the Internal Revenue Code, as amended, the State of Oklahoma, its agencies and political subdivisions, are exempt from payment of the three (3) per centum transportation tax levied by subsection (a) of Section 3475, in either of the following cases:

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- (a) When the property (equipment, goods, materials, etc.) is consigned to the State, its agencies, or political subdivisions, or
- (b) When such property is consigned to the State, its agency or political subdivisions in care of the contractor.

It is the policy of the owner to take advantage of the savings afforded by the above mentioned exemption. To this end, the contractor agrees to comply with the following:

In determining cost of material and computing freight charges do not include 3% Federal transportation tax. Section 3475 (b) of the Internal Revenue Code, as amended, exempts the owner from this tax. The successful bidder will be furnished an appropriate exemption certificate form by the contracting authority, and will be authorized to have all shipments of construction materials and equipment entering into this contract consigned to the owner in care of himself, thereby enabling him to take advantage of the above mentioned exemption.

NOTE: Said exemption will not apply to shipments of fuel, lubricants, spare parts or items of construction equipment belonging to the contractor which will not be incorporated in the construction project and which will not become the property of the owner.

106.29 - Federal Aid Provisions. When the United States government pays all or any portion of the cost of a project, the Federal laws and the rules and regulations made pursuant to such laws must be observed by the contractor, and the works shall be subject to the inspection of the appropriate Federal agency.

Such inspection shall in no sense make the Federal government a party to this contract and will in no way interfere with the rights of either party hereunder.

106.30 - Work Done by Private Contract. These documents when used for the construction of work for private parties shall apply whenever applicable and all rights and privileges of the contracting parties shall be in effect as though specifically mentioned herein. The agreement between the contractor and private parties shall not contain any clause relieving either party to the agreement from complying with any applicable requirement contained in these specifications and the plans for the work under contract.

The Engineer will give a decision on request, upon application of any doubtful regulation. The City assumes no obligation for the payment of any amounts due to or from any of the contracting parties.

SECTION 107 - PROSECUTION AND PROGRESS

107.01 - Subletting of Work. The contractor shall not employ any subcontractor on the work without prior written approval of the Engineer.

The owner will not recognize any subcontract on the work. The contractor shall, at all times when work is in operation, be represented either in person or by a qualified superintendent or other designated representative. If the contractor sublets the whole or any part of the work to be done under this contract, he will not, under any circumstances be relieved of his responsibility and obligations. All transactions of the Engineer shall be with the contractor. Subcontractors will be considered only in the capacity of employees or workmen and shall be subject to the same requirements as to character and competency.

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107.02 - Assignment of Contract. The contractor shall not assign, transfer, convey or otherwise dispose of the contract or his right, title or interest in or to the same or any part thereof without the previous consent of the Engineer in writing, approved by the Council and concurred in by the surety. If the contractor does, without such previous consent, assign, transfer, convey, sublet or otherwise dispose of the contract or of his right, title or interest therein or any part thereof to any person or persons, partnership, company, firm or corporation, or by bankruptcy, voluntary or involuntary, or by assignment under the insolvency laws of any state, attempt to dispose of the contract or make default in or abandon said contract, then the contract may at the option of the owner, be revoked and annulled unless the surety shall successfully complete said contract and any monies due or to become due under said contract shall be retained by the owner as liquidated damages for the reason that it would be impracticable and extremely difficult to fix the actual damages.

107.03 - Prosecution of Work. The contractor shall begin the work to be performed under the contract within the time limit stated in the advertisement, proposal and contract, and shall conduct the work in such a manner with sufficient equipment, materials and labor as is necessary to insure its completion within the time limit set forth in the advertisement, proposal and contract. The sequence of all construction operations shall at all times be as directed by or approved by the Engineer. Should the prosecution of the work for any reason be discontinued by the contractor, he shall notify the Engineer at least twenty-four (24) hours in advance of resuming operations.

107.04 - Limitation of Operation. The contractor shall conduct his work so as to create a minimum amount of inconvenience to the public. At any time when in the judgment of the Engineer the contractor has obstructed or closed or is carrying on operations on a greater portion of the street or public way than is necessary for the proper execution of the work, the Engineer may require the contractor to finish the section of work which is in progress before work is started on any additional section.

107.05 - Character of Workmen and Equipment. The contractor shall employ such superintendents, foremen and workmen as are careful and competent and the Engineer may demand the dismissal of any person or persons employed by the contractor, in, about or on the work who shall misconduct himself of being incompetent or negligent in the proper performance of his or their duties or neglect or refuse to comply with the directions of the Engineer, and such person or persons shall not be employed again thereon without the written consent of the Engineer. Should the contractor continue to employ or again employ such person or persons without the written consent of the Engineer, then the Engineer may withhold all estimates which are or may become due or may suspend work until such orders are complied with.

All workmen shall have sufficient skill and experience to properly perform the work assigned them. All workmen engaged on special work or skilled work or in any trade shall have sufficient experience in such work to properly and satisfactorily perform it and operate the equipment involved, and shall make due and proper effort to execute the work in the manner prescribed in these specifications. Otherwise, the Engineer may take action as above prescribed. In the employment of labor, preference shall be given, other conditions being equal, to bona fide residents of the City but no other preference or discrimination among citizens of the United States shall be made.

The contractor shall furnish such equipment as is considered necessary for the prosecution of the work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools and machinery used for handling materials and

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executing any part of the work shall be subject to the approval of the Engineer and shall be maintained in a satisfactory working condition. Equipment on any portion of the work shall be such that no injury to the work or adjacent property will result from its use.

107.06 - Day's Work; Working Hours. Work shall be done only during regular and commonly accepted and prescribed working hours. No work shall be done nights, weekends or holidays recognized by the City unless a special order or permit is given by the Engineer to do so. Eight (8) hours shall constitute a day's work and the contractor shall observe all State laws and City ordinances governing the hours of work.

107.07 - Time of Commencement and Completion. The contractor shall commence work within the time specified in the advertisement, proposal or contract and the rate of progress shall be such that the whole work will be performed and the premises cleaned up in accordance with the contract, plans and specifications within the time limit, where such time limit is stated in the advertisement, proposal or contract, unless an extension of time be made in the manner hereinafter specified.

107.08 - Extension of Time of Completion. The contractor shall be entitled to an extension of time, as provided herein only when claim for such extension is submitted to the Engineer in writing by the contractor within seven (7) days from and after the time when any alleged cause of delay shall occur and then only when such claim is approved by the Engineer and the owner. In adjusting the contract time for the completion of the projects, all strikes, lockouts, unusual delays in transportation or any condition over which the contractor has no control and also any suspensions ordered by the Engineer for causes other than inclement weather, not the fault of the contractor shall be excluded from the computation of the contract time for completion of the work. If the satisfactory execution and completion of the contract should require work or materials in greater amount or quantities than those set forth in the contract, then the contract time shall automatically be increased in the same proportion as the cost of the additional work bears to the cost of the original work contracted for. No allowance shall be made for delays or suspension of the prosecution of the work due to the fault of the contractor or due to inclement weather.

107.09 - Failure to Complete Work on Time. The time of completion is of the essence of the contract. For each calendar day that any work shall remain uncompleted after the time agreed upon in the proposal or the contract, or as automatically increased by additional work or materials ordered after the contract is signed, or the increased time granted by the owner for the completion of said work, the sum per day given in the following schedule, unless otherwise specified in the proposal or special provision, will be deducted from the monies due the contractor, not as a penalty but as liquidated damages.

<u>Amount of Contract</u>	<u>Amount of Liquidated Damages per Day</u>
Less than \$5,000.00	\$100.00
\$ 5,000.00 and less than \$ 15,000.00	150.00
\$ 15,000.00 and less than 25,000.00	200.00
\$ 25,000.00 and less than 50,000.00	250.00
\$ 50,000.00 and less than 100,000.00	300.00
\$100,000.00 and over	350.00

The sum of money thus deducted for such delay, failure or non-completion is not to be considered as a penalty, but should be deemed, taken and treated as reasonable liquidated damages since it would be impracticable and extremely difficult to fix the actual damages.

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107.10 - Temporary Suspensions. The Engineer shall have the authority to suspend the work wholly or in part for such period or periods as he may deem necessary, due to unsuitable weather or such other conditions as are considered unfavorable for the suitable prosecution of the work.

If it should become necessary to stop work for an indefinite period, the contractor shall store all materials in such manner that they will not obstruct or impede the traveling public unnecessarily nor become damaged in any way, and he shall take every precaution to prevent damage or deterioration of the work performed, and shall provide suitable drainage about the work and erect temporary structures where necessary.

The contractor shall not suspend work without written authority from the Engineer and shall proceed with the work promptly when notified by the Engineer to resume operations.

107.11 - Suspension of Work and Annulment of Contract. The work or any portion of the work under contract shall be suspended immediately, on written order of the Engineer or the owner, a copy of such notice to be served upon the contractor's surety, or the contract may be annulled by the owner, for any good cause or causes, among others of which special reference is made to the following:

- (a) Failure of the contractor to start the work within the time limit specified.
- (b) Substantial evidence that the progress being made by the contractor is insufficient to complete the work within the specified time.
- (c) Failure of the contractor to provide sufficient and proper equipment for properly executing the work.
- (d) Deliberate failure on the part of the contractor to observe any requirements of these specifications or to comply with any orders given by the Engineer, as provided for in these specifications.
- (e) Failure of the contractor promptly to make good any defects in materials or workmanship or any defects of any other nature, the correction of which as been directed in writing by the Engineer.
- (f) Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the owner in the construction of work under contract.

When work is suspended for any one of the causes itemized above, or for any other cause or causes, the contractor shall discontinue the work or such part thereof as the owner shall designate, whereupon the surety may, at its option, assume the contract or that portion thereof which the owner has ordered the contractor to discontinue and may perform the same or may, with the written consent of the Engineer, approved by the owner, sublet the work or portion of the work so taken over; provided, however, that the surety shall exercise its option, if at all, within two (2) weeks after the written notice to discontinue work has been served upon the contractor and upon the surety or its authorized agent. The surety, in such event, shall assume the contractor's place in all respects and shall be paid by the owner for all work performed by it in accordance with the terms of the contract and, if the surety, under the provisions hereof, shall assume said entire contract, all monies remaining due the contractor at the time of his default shall thereupon become due and payable to the surety as the work progresses, subject to all the terms of the contract.

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In the event the surety does not, within the time hereinbefore specified, exercise its right and option to assume the contract, or that portion thereof which the owner has ordered the contractor to discontinue, then the owner shall have the power to complete, by contract or otherwise as it may determine, the work herein described, or such part thereof as it may deem necessary, and the contractor hereby agrees that the owner shall have the right to take possession of and use any of the materials, plant, tools, equipment, supplies, and property of every kind provided by the contractor for the purpose of his work and to procure other tools, equipment and materials for the completion of the same, and to charge to the account of the contractor the expense of said contract for labor, materials, tools, equipment and expenses incident thereto. The expense so charged shall be deducted by the owner out of such monies as may be due or may at any time thereafter become due the contractor under and by virtue of the contract or any part thereof. The owner shall not be required to obtain the lowest bid for the work of completing the contract but the expense to be deducted shall be the actual cost of such work. In case such expense is less than the sum which would have been payable under the contract, if the same had been completed by the contractor, the balance shall operate as liquidated damages, as hereinabove set out. In case such expense shall exceed the amount which would have been payable under the contract, if the same had been completed by the contractor then the contractor and his surety shall pay the amount of such excess to the owner on notice from the owner of the excess so due. When any particular part of the work is being carried on by the owner by contract or otherwise under the provisions of this section, the contractor shall continue the remainder of the work in conformity with the terms of the contract and in such manner as in no wise to hinder or interfere with the performance of workmen employed as above provided by the owner.

107.12 - Termination of Contract. The contract will be considered fulfilled, save as provided in any bond or bonds or by law, when all the work has been completed, the final inspection made by the Engineer, and final acceptance and final payment made by the owner.

SECTION 108 - MEASUREMENT AND PAYMENT

108.01 - Measurement of Quantities. The determination of quantities of work acceptable completed under the terms of the contract or as directed by the Engineer, in writing, will be made by the Engineer, based on measurements taken by him or his assistants. These measurements will be taken according to the United States Standard Measurements. When materials are measured in the vehicle, the measurement will be taken at the point of delivery. When required by the Engineer, the capacity of all vehicles shall be plainly marked on each vehicle and the capacity of makings shall not be changed without the permission of the Engineer.

108.02 - Schedule of Values (for Lump Sum Contracts Only). Contractors will submit schedule of unit prices of various parts of the work within ten (10) days after the contract is awarded. Schedule shall be a complete breakdown of labor and materials required for the job showing quantities and unit prices. The whole aggregating the total sum of the contract. The Engineer will furnish the contractor a list of the certain items on which unit prices and quantities are desired which will be included in this schedule. The schedule when approved by the Engineer shall be used as a basis for monthly payments to the contractor. In applying for payments the contractor's statement shall be broken down in conformity with this schedule.

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108.03 - Scope of Payment. The contractor shall receive and accept the compensation as herein provided in full payment for furnishing all labor, materials, tools, equipment and incidentals, for performing all work contemplated and embraced under the contract; for all loss of damage arising out of the nature of the work or from the action of the elements, for any unforeseen defects or obstructions which may arise or be encountered during the prosecution of the work and before its final acceptance by the Engineer; for all risks of every description connected with the prosecution of the work; for all expenses incurred by or in consequence of suspension or discontinuance of such prosecution of the work as herein specified; for any infringement of patents, trademarks or copyrights and for completing the work in an acceptable manner according to the plans and specifications.

The payment of any current or partial estimate prior to final acceptance of the work by the owner shall in no way constitute an acknowledgement of the acceptance of the work nor in any way prejudice or affect the obligation of the contractor to repair, correct, renew, or replace at his expense any defects or imperfections in the construction of the work under the contract and its appurtenances nor any damage due to or attributed to such defects, which defects, imperfections or damage shall have been discovered on or before the final inspection and acceptance of the work. The Engineer shall be the sole judge of such defects, imperfections or damage and the contractor shall be liable to the owner for failure to correct the same as provided herein.

108.04 - Payment for Extra Work. The extra work done by the contractor as authorized and approved by the Engineer and the owner, will be paid for in the manner hereinafter described and the compensation thus provided shall be accepted by the contractor as payment in full for all labor, materials, tools, equipment and incidentals, and all superintendents and timekeepers services, all insurance and all other overhead expense incurred in the prosecution of the extra work.

Payment for extra work will be made by one or more of the following methods:

- (a) Unit prices agreed on in writing by the Engineer and the contractor and approved by the owner before said work is commenced, subject to all other conditions of the contract.
- (b) A lump sum price agreed on in writing by the Engineer and the contractor and approved by the owner before said work is commenced, subject to all other conditions of the contract.
- (c) The actual cost including labor, materials, tools, equipment and field supervision of such extra work plus fifteen percent (15%) which fifteen percent (15%) is hereby understood and agreed to include all overhead expense and profits, when agreed upon in writing by the Engineer and the contractor, and approved by the owner before said work is commenced; subject to all other conditions of the contract.

The contractor shall, on or before the 10th day of the month succeeding that in which any extra work shall have been performed, file with the Engineer his claim and an account giving the itemized cost of such work and shall give the Engineer access to all accounts, bills and vouchers relating thereto.

108.05 - Partial Estimate. Between the 25th day and the last day of each month, the Engineer will make an approximate estimate of the value of the work done and/or materials furnished during that month under these specifications. Whenever the said estimate or estimates of work done and/or materials furnished

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since the last previous estimate exceed one hundred dollars (\$100.00) in amount, ninety percent (90%) of such estimated sum will be paid the contractor. The contractor shall furnish to the Engineer such detailed information as he may request to aid him as a guide in the preparation of monthly estimates.

It is understood that the estimates from month to month will be approximate only and all partial monthly estimates and payment will be subject to correction in the estimate rendered following discovery of an error in any previous estimate and such estimate shall not, in any respect, be taken as an admission of the owner of the amount of work done or its quality or sufficiency nor as an acceptance of the work or the release of the contractor of any of his responsibility under the contract.

108.06 - Payments Withheld. The Engineer may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect the owner from loss on account of:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the contractor to make payments property to subcontractors or for materials or labor.
- (d) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (e) Damage to another contractor.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

108.08 - Acceptance and Final Payment. Whenever the improvement provided for by the contract shall have been completely performed on the part of the contractor, satisfactory maintenance bond filed, and all parts of the work have been approved by the Engineer and accepted by the owner, a final estimate showing the value of the work will be prepared by the Engineer as soon as the necessary measurements and computations can be made. All prior estimates, upon which payments have been made, are subject to necessary corrections or revisions in the final payments. The amount of this estimate, less any sums that have been deducted or retained under the provisions of the contract, will be paid to the contractor as soon as practicable after the final acceptance, provided the contractor has furnished to the owner satisfactory evidence that all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for the purpose of such improvement have been paid or that the person or persons to whom the same may respectively be due have consented to such final payment.

The acceptance by the contractor of the last payment, as aforesaid, shall operate as and shall be a release to the owner from all claims or liability under the contract for anything done or furnished or relating to the work under the contract or for any act or neglect of said owner relating or connected with the contract.

108.09 - Final Measurements and Final Estimates. Final measurements will be taken and final estimates completed as soon as work has progressed to a point where the final measurements may be taken accurately.

108.10 - Payment for Assessment Projects. Payments for assessment projects will be made in cash received from assessments and bonds as provided by State of Oklahoma Statutes, unless otherwise specified.

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108.11 - Hourly Wage Rate. Not less than the prevailing hourly rate of wages as established by the Commissioner of Labor and filed with the Secretary of State shall be paid to any workmen employed on this project.