

General Conditions Applying to Private Construction of Public Facilities

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I. DEFINITIONS AND TERMS

A. GENERAL

The General Conditions and Requirements and contract stipulations may refer to conditions which will not be encountered in the performance of work included in this contract and which are not applicable thereto. Any requirements, provisions, or other stipulation of these General Conditions and Requirements which pertain to a non-existent condition and are not applicable to the work to be performed hereunder shall have no meaning in this contract.

The Special Provisions shall govern in case of any conflicts between the General Conditions and Requirements and the Special Provisions.

B. ABBREVIATIONS

The following abbreviations, when appearing in the Contract Documents, shall be construed to be the same as their respective expressions:

AAP -	Affirmative Action Plan
AASHTO -	American Association of State Highway and Transportation Officials
ACI -	American Concrete Institute
AISC -	American Institute of Steel Construction
ANSI -	American National Standards Institute
ASA -	American Standards Association
ASTM -	American Society for Testing and Materials
AWG -	American Wire Gauge
AWS -	American Welding Society
AWWA -	American Water Works Association
EEO -	Equal Employment Opportunity
FHWA -	Federal Highway Administration
IMSA -	International Municipal Signal Association
IPCEA -	Insulated Power Cable Engineers Association
LES -	Lincoln Electric System
LSP -	Lincoln Standard Plan
MUTCD -	Manual Uniform Traffic Control Devices
NDOR -	Nebraska Department of Roads
NEC -	National Electrical Code
NEMA -	National Electrical Manufacturers Association
NESC -	National Electrical Safety Code
OSHA -	Occupational Safety and Health Administration

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SSP -	State Standard Plan
UL -	Underwriters Laboratories
USASI -	USA Standards Institute

C. DEFINITIONS

- 1. Addendum (Addenda).** Additional documents, issued by the City to prospective Bidders prior to the closing date for receipt of bids, which are intended to change or clarify the original plans and/or specifications, i.e., additions, deletions, modifications, or explanations.
- 2. Advertisement.** The public announcement, stating the time and place for receiving bids for the Work.
- 3. Bid** shall mean the properly signed and guaranteed written offer of the Bidder to perform the Work. Bid shall include Proposals or other formal written offers to perform the Work.
- 4. Bidder** shall mean any individual, entity, firm, partnership, or corporation formally submitting a proposal to perform the Work or to supply materials for the Work. Bidder shall include any of the same acting through an authorized agent or representative.
- 5. Brand Name.** Wherever in the specifications or proposal form brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.
- 6. Calendar Days.** Every day shown on the calendar. (Saturdays, Sundays and Holidays included).
- 7. City.** The City of Lincoln, Nebraska, and shall include the City's authorized representative.
- 8. City Contract Administrator.** The City Contract Administrator shall be the person designated by the Department Director responsible for the Project.
- 9. Consultant** shall mean the designated architect or engineer the Permittee employed, or design professional contracted to provide design and other professional services related to the project.

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- 10. Contract.** The written agreement between the City Permittee and the Contractor, containing all the covenants of that agreement. Contract Documents shall include the Contract, Conditions of the Contract (General, Supplementary and other conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract and modifications or other agreements required to complete the work issued after execution of the Contract. Unless specifically excluded in the Contract, Contract Documents shall also include the bidding requirements, Advertisement, Instructions to Bidders, sample forms, Contractor's Bid and Addenda.
- 11. Contract Administrator.** The Contract Administrator shall be the person designated by the Permittee responsible for the Project.
- 12. Contract Bonds.** The approved forms of security, executed by the Contractor and his surety or sureties, guaranteeing complete execution of the contract and the payment of all legal debts pertaining to the contract.
- 13. Contractor.** The individual, entity, firm, partnership, or corporation undertaking the execution of the Work under the terms of the Contract who, regardless of any of the contract terms, is always considered as an independent contractor.
- 14. Contract Completion Date.** The calendar date stipulated in the contract by which the proposed work shall be complete.
- 15. County.** Lancaster County, Nebraska.
- 16. Easement.** A right to use or control property for a designated purpose.
- 17. Equipment.** All machinery, tools, supplies necessary for maintenance, and apparatus necessary for the construction of the Work.
- 18. Final Completion.** The stage when the City determines that the Work has been totally completed in accordance with the terms and conditions of the Contract Documents.
- 19. General Conditions.** Standard provisions required by the City for Permittee's construction contracts. The City may delete or modify any of these standard provisions for a particular contract by indicating a change in the Special Provisions or in the bid document. Any bidder accepting a

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purchase order/contract issued by the City agrees that the provisions included within the Invitation for Bid shall prevail.

20. **Laboratory.** The City of Lincoln's Testing Laboratory or any other laboratory as may be designated by the Contract Administrator for the purpose of testing materials and/or work performed.
21. **Lump Sum.** The total price of a group of items which is priced as a whole.
22. **Materials.** All components used in the Work, materials, supplies and equipment incorporated into the Work shall be new, the latest make/model, of the best quality, and the highest grade workmanship.
23. **Modification.** Any authorized written order the Contract Administrator issued for a minor change in the Work and shall be synonymous with Field Orders and/or Field Modifications.
24. **Notice to Proceed.** Written notice instructing the Permittee and Contractor to proceed with the Work.
25. **Permittee.** The entity or person, who by Executive Order of the Mayor, is approved to construct various subdivision improvements.
26. **Plans.** The drawings, standard plans, profiles, typical cross sections and supplemental drawings which show the dimensions, locations, details, and character of the work to be performed. All such documents are considered a part of the contract documents, whether attached to the plans or separate.
27. **Project.** The total construction related to the Work provided by this Contract. The Project may include construction by the City or by separate contractors.
28. **Proposal.** The properly signed written (or electronic if authorized) offer of the Bidder to perform all the work.
29. **Right-of-Way.** Land, property, or interest therein devoted to or acquired for the purposes of public roads or utilities.
30. **Special Provisions.** Additions to or modifications of the standard specifications and supplemental specifications covering conditions peculiar to the work.

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- 31. Specifications.** Any written requirement for materials, equipment, construction systems, standards or workmanship for the Work, including performance of related services.
- 32. Standard Specifications.** The officially adopted Standard Specifications City of Lincoln, Nebraska.
- 33. Subcontractor.** An individual, entity, firm, partnership, or corporation to whom the Contractor sublets a portion of the work.
- 34. Subsidiary.** Any item required in carrying out the duties and obligations imposed by the contract for which no direct pay will be allowed. The cost of subsidiary items will be included in those items for which payment is proposed.
- 35. Substantial Completion** shall mean the stage when the City determines (according to the Contract Documents) that the Work or a designated portion thereof is sufficiently complete, and when the Contractor has secured all required occupancy permits, if any, so the City can occupy or use the Work for its intended use.
- 36. Supplemental Specifications.** Specifications adopted subsequent to publication of the standard specifications which may add to, delete, or modify the standard specifications.
- 37. Surety.** The individual, firm, or corporate body bound with and for the Contractor for the acceptable completion of the work and the contract, and for payment of all just claims arising therefrom.
- 38. Utilities.** Overhead or underground wires, pipe lines, conduits, ducts, or structures, sewers or storm sewer drains owned, operated or maintained in or across a public right-of-way or private easement.
- 39. Work** shall include the construction and services the Contract Documents require, whether completed or partially completed, and all other labor, materials, equipment and services necessary to fulfill the Contractor's obligations. Work may constitute the whole or a part of the Project.

II. PROPOSAL REQUIREMENTS AND CONDITIONS

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A. EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK

Bidders shall inform themselves of the conditions under which the work is to be performed, concerning the site of the Work, the structure of the ground, obstacles which may be encountered and all other relevant matters concerning the work to be performed. Where test boring logs and/or reports indicating underground conditions are attached to the Contract Documents, such logs and/or reports shall be considered only for information and as indicative of conditions as observed at the time and place indicated, and the City shall not be held responsible for any variance in conditions encountered at the time of actual construction.

It shall be the responsibility of the Contractor to satisfy himself by such methods as he deems necessary prior to the letting as to underground structures, underground utilities (both public and private), underground soil and rock formations, ground water, and obstacles to be encountered.

The Contractor to whom a contract is awarded will not be allowed any extra compensation by reason of any matter or thing concerning which he might fully have informed himself prior to the bidding.

The successful Contractor will be required to employ, so far as is possible, such methods and means in the carrying out of his work as will not cause any interruption or interference with any other Contractor.

The Bidder is expected to base his bid on materials and equipment which comply fully with the plans and specifications, and in the event he names in his bid materials or equipment which do not conform, he will be responsible for furnishing materials and equipment which fully conform at no change in his bid price.

Before submitting a proposal, each Contractor shall examine the complete specifications and plans, including all related documents contained herein.

B. TYING BIDS

Bidders shall not tie their bids to any other proposal except as may be provided in the proposal form or by special provision.

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C. SUBCONTRACTORS

The Contractor shall notify in writing, the City Contract Administrator of the names and addresses of the Subcontractors he proposes to use on the contract. The notification shall be submitted prior to the commencement of the subcontracted work. The City Contract Administrator shall have the right to approve or disapprove the use of any Subcontractor. The Contractor agrees to bind every Subcontractor (and every Subcontractor of a Subcontractor) by the terms of the Contract.

D. CONSTRUCTION PERFORMANCE AND CONSTRUCTION PAYMENT BONDS

Within ten (10) days after the acceptance of the bid, the Contractor shall furnish, on a form acceptable to the City, a construction performance and construction payment Bond, in a sum not less than the Contract Sum, executed by the Contractor and by a corporate surety company authorized to transact business in the State of Nebraska. Such Bond shall be conditioned upon the faithful performance of all the terms and conditions of the Contract Documents, including the holding harmless of the City from failure to do so, and including the making good of any and all guarantees that the Contract Documents may require. The Bond shall be further conditioned upon the payment of all laborers and material suppliers used in the performance of the Contract, including Insurance premiums and interest.

III. SCOPE OF WORK

A. INTENT OF DOCUMENTS

The intent of the documents is to include all labor and materials except that which is specially designated to be supplied by others, all tools and equipment, and everything necessary for the proper execution of the Work. The Contractor shall perform all necessary and incidental work and furnish any such materials as fully as if they were particularly delineated or described in the contract.

The contractor shall bring to the attention of the Contract Administrator any conflicts between various parts of the Contract Documents, or questions pertaining to procedures, traffic control or material, for determination.

Special Provisions, supplementing or modifying the specifications, whether incorporated in or furnished by addendum to the Contract Documents, shall be

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considered an integral part of same. Said special provisions shall, supercede the specifications.

If the plans and specifications should be found to be contradictory in any part, the plans shall govern.

Materials or work described in words which, so applied, have known technical or trade meaning shall be held to refer to such recognized standards.

Figured dimensions on the plans shall be taken as correct but shall be checked by the Contractor before starting construction. Any errors, omissions, or discrepancies shall be brought to the attention of both the City Contract Administrator and the Contract Administrator and their decision thereon shall be final. Correction of errors or omissions on the drawings or specifications may be made by the Contract Administrator when such correction is necessary for the proper execution of the work.

The Contract Administrator will furnish the Contractor, free of charge, up to five (5) original-size copies of drawings and specifications that the Contract Administrator deems necessary to carry out the work. The Contractor may purchase additional copies.

The Contractor may be furnished additional instructions and detail drawings by the Contract Administrator as necessary to carry out the work required by the Contract Documents. The additional drawings and instructions so supplied shall become a part of the Contract Documents. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

B. CHANGES IN THE WORK

1. The City may, at any time as the need arises, order changes in the scope of the work to be performed or the materials to be furnished without invalidating the Contract. If such changes are minor, they may be authorized by the City Contract Administrator. The request for such minor changes shall be documented in writing by the City Contract Administrator. If such changes require an increase or decrease in the amount due under the Contract or in the time required for performance of the Work, an equitable adjustment shall be authorized by written change order.
2. The Contractor may, at any time, request changes in the scope of the work to be performed or the materials to be furnished. Any such changes must be approved by the City prior to being implemented by the Contractor.

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Any changes made by the Contractor without the approval of the City shall be cause for rejection of the work, at the discretion of the City.

C. CLEAN UP

The Contractor shall at all times keep the site of the work free from accumulations of waste materials or rubbish caused by his employees or work, and at the completion of the work he shall remove all rubbish from and about the work and all tools, equipment, scaffolding and surplus materials and shall leave the site clean and ready for use.

IV. CONTROL OF MATERIALS

A. MATERIAL STORAGE

The Contractor shall store all material under the general supervision and direction of the Contract Administrator.

The Contractor shall store all Materials to preserve their quality and fitness for the Work and to facilitate inspection.

The Contract Administrator may, when needed, order the Contractor to store Materials under cover or on platforms or as the Contract Administrator otherwise reasonably requires to protect the same from damage.

Materials from different sources of supply shall not be stored in the same stockpile unless approved by the Contract Administrator.

B. TESTS AND SAMPLES

The Contractor shall furnish, at no expense to the City, such samples of materials as may be required by the City Contract Administrator for testing. Materials having the same character, quality, and grading as the approved samples will be acceptable for the particular use for which they are intended. Samples shall be accompanied by a statement giving the type of materials, name of the producer, batch number, date, and location of the plant. The City will provide for the initial testing of materials at no expense to the Contractor. Any expense for retesting, required to establish the quality or acceptability of the materials in question shall be borne by the Contractor.

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The City reserves the right to retest all materials, prior to incorporation into the Work. The City may then reject all materials that, when retested, do not comply with the Contract Documents.

C. MATERIALS AND WORKMANSHIP

No material of any kind shall be installed in the project until the City Contract Administrator verifies the materials are in compliance with the contract documents. Any materials or workmanship found at any time to be defective shall be remedied at once regardless of previous inspections.

All materials not conforming to the specifications shall be considered as defective, and all defective material, whether in place or not, shall be rejected, and unless remedied shall be removed from the site of the Work at the Contractor's expense. Rejected material which has been reconditioned or corrected so that it satisfactorily meets the Specifications shall not be used without written approval of the City Contract Administrator.

At any time during the course of a project, when, in the opinion of the Contract Administrator, provisions of the contract documents are being violated by the Contractor or his employees, the Contract Administrator shall have the right and authority to order all construction to cease or material to be removed, until arrangements satisfactory to the Contract Administrator are made by the Contractor for resumption of the work in compliance with the provisions of the Contract.

D. ALTERATIONS AND SUBSTITUTIONS

The City Contract Administrator shall have the right to alter and modify the plans and specifications, thus making specific changes in the Work. If such changes diminish the amount of Work, the Contractor shall not file any claim for anticipated profit from such loss of Work. If such changes increase the amount of Work, such increase shall be made by Modification to the Contract.

Whenever the drawings or specifications identify a materials, article, or piece of equipment by brand name or catalog number, such identification shall define performance, quality level, or other salient requirements. The City Contract Administrator may consider other products of equal performance, capacity, quality and function upon the Contractor's written substitution request. Otherwise, the Contractor shall use the identified goods, unless the City Contract Administrator approves such request for substitution in writing. Upon any substitution of lesser priced goods, the Contract Administrator shall prepare

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a Modification deducting any resulting price differential from the Contract Sum. Otherwise, the Contractor shall provide any incidental changes or extra component parts required to accommodate the substitute without a change in the Contract Sum or Contract Time. The Contractor guarantee that approved substitutes will not effect major changes in the function or general design.

E. HAZARDOUS ENVIRONMENTAL CONDITIONS

The Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Document to be within the scope of the Work. The Contractor shall be responsible for a Hazardous Environmental Condition created with any materials or equipment brought to the Site by the Contractor, Subcontractors, Suppliers, or anyone else for whom the Contractor is responsible.

If the Contractor encounters a Hazardous Environmental Condition or if the Contractor or anyone for whom the Contractor is responsible creates a Hazardous Environmental Condition, the Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby; and (iii) notify the Contract Administrator, AND any regulatory agency required by law. The Contract Administrator shall promptly determine the necessity for the City to retain a qualified expert to evaluate such conditions or take corrective action, if any.

The Contractor shall be responsible for any and all civil or criminal penalties, fines, damages, or other charges imposed by any regulatory agency or court for sewage discharges that are in violation of applicable statutes and laws and that are a result, direct or indirect, of work performed under this Contract. The Contractor shall also be responsible for reimbursement to the City for administration, reporting, and tracking expenses required as a result of any spill event. In the event the regulatory agency or court imposes a probationary period, the Contractor shall post bond for the probationary period to ensure that all such costs are reimbursed to the City. This responsibility shall apply whether penalties are imposed directly on the Contractor or any of its subcontractors, or the City of Lincoln. The Contractor shall defend and indemnify the City against such penalties. Regulatory agencies may include, but are not limited to, the Department of Environmental Quality and the US EPA.

V. CONTROL OF THE WORK

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A. AUTHORITY OF THE CONTRACT ADMINISTRATOR

The City Contract Administrator in this Contract is acting as an agent of the City during the construction period. The City Contract Administrator shall decide questions which may arise as to quality and acceptability of materials furnished and work performed. The Contractor will be held strictly to the intent of the Contract Documents in regard to the quality materials, workmanship, and execution of the work. Inspections may be made at the factory or fabrication plant of the source of material supply.

The City Contract Administrator will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety, except that those procedures specifically called for in the Contract Documents shall be strictly followed.

The City Contract Administrator will have the authority to suspend the work wholly or in part due to the failure of the Contractor to correct conditions unsafe to the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for unsuitable weather; for conditions considered unsuitable for the prosecution of the work; or for any other reason deemed to be in the public interest, for such periods of time as the City Contract Administrator deems necessary.

B. PROJECT COORDINATION

Whenever prosecution of work under the contract involves coordination and cooperation among various agencies, such as utility companies and other City departments, subcontractors and other contractors, the Contractor shall make every effort to coordinate his work with that of said agencies, in order to minimize any conflicts which may arise and to provide the minimum of inconvenience to all parties involved.

Street reconstruction, excavation, or maintenance work within the parking-metered district, which may involve the use of metered parking stall space will require that the meter be hooded or removed by the City. The Contractor shall notify the Traffic Operations Section at least forty-eight (48) hours prior to the time which the parking space or spaces will be occupied.

Prior to any underground work or excavation of any kind, the Contractor shall notify the appropriate agencies and owners, including the One-Call Office, and shall allow personnel access to the site of the work in order to locate any underground facilities.

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C. INSPECTION TESTING AND CORRECTING WORK

The Contractor shall conduct or arrange for any tests, inspections and approvals of portions of the Work required by the Contract Documents, ordinances, rules, regulations or orders of public authorities having jurisdiction at appropriate times. All testing shall be prompt to avoid unreasonable delay in the Work. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall secure all required Certificates of testing, inspection or approval unless the Contract Documents require otherwise. The Contractor shall promptly deliver such Certificates to the Contract Administrator.

If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, the City shall instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City. The City shall bear such costs except as provided in this section. If such testing or inspection, reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the City Contract Administrator's services and expenses.

If a portion of the Work has been covered that the City Contract Administrator has not specifically requested to observe prior to its being covered, the City Contract Administrator may request to see such Work. Upon such request, the Contractor shall uncover the specified Work. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs. If such Work is in accordance with the Contract Documents, the City shall pay such costs.

D. CORRECTING WORK

The Contractor shall promptly correct Work rejected by the City Contract Administrator or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the City Contract Administrator's services and expenses made necessary thereby. The Contractor shall remove immediately

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from the site portions of the Work that are not in accordance with the requirements of the Contract Documents.

The Contractor shall bear the cost of correcting any damages caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

If the City elects in writing to accept Work that is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction.

E. CONTRACTOR'S USE OF PUBLIC AND PRIVATE UTILITIES

The Contractor will be responsible for arrangements for all temporary service connections for various utilities and is responsible for all necessary payments to the various utility companies for such temporary services. The City may provide a Contractor with a method or process for reimbursement of certain utility payments.

Prior to the use of any City water from a fire hydrant, the Contractor shall take out the necessary permit for a hydrant meter and valve from the Lincoln Water System.

The Contractor shall pay the permit fees which are established by the Lincoln Water System for the installation or moving of hydrant meters and valves.

The Contractor shall not operate the hydrant, but shall use the exterior valve to control the flow of water. The Contractor shall be liable for any damage to the meter and valve.

F. SHOP DRAWINGS

The Contractor, as soon as possible, shall submit to the City Contract Administrator all shop or other drawings and schedules required for the Work, including those pertaining to structural and reinforcing steel. The need for more than one resubmittal, or any other delay in obtaining City Contract Administrator's review of submittals will not entitle the Contractor to an extension of the Contract time. The Contractor shall make any corrections in the drawings required by the City Contract Administrator and resubmit the same without delay. Catalog sheets or other descriptive data shall be furnished on all equipment to be installed. Such material shall be in sufficient detail to accurately describe the materials and method of operation of the equipment.

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At least three (3) final copies of all shop or setting drawings shall be submitted to the Contract Administrator, who, after checking, will retain two (2) copies and return the other copy to the Contractor. The Contract Administrator's approval of shop drawings of equipment and material shall extend only to determining the conformity of such equipment and materials with the general features of the design drawings prepared by the Contract Administrator. It shall be the responsibility of the Contractor to determine the correctness of all dimensions and minor details of such equipment and materials so that, when incorporated in the work, correct operation will result. Approval by the Contract Administrator will not relieve the Contractor of any responsibility for the proper performance or functioning of the completed project.

The Contractor shall obtain the Contract Administrator's approval before beginning any portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals. The Contractor shall submit one copy of the approved shop drawings to the City Contract Administrator.

VI. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

A. PROTECTION FROM LOSS

The Contractor shall protect all parts of the Work from loss by theft or otherwise, and shall assume all risks for repair and replacement for damage to the same, whether caused by lightning, fire, wind, water, theft, vandalism, or other causes, until completion and acceptance of the work.

B. ASSUMPTION OF LIABILITY AND INDEMNIFICATION

The Contractor shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the City of Lincoln for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.

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C. CONTRACTOR'S INSURANCE

The Contractor shall not commence work under this Contract until he has obtained all insurance required under this article or as may be required elsewhere in the Contract Documents, until such insurance has been approved by the City. The Contractor shall not allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained with the amount specified in the Contract Document.

D. PATENTED DEVICES, MATERIALS, AND PROCESSES

It is mutually understood and agreed that, without exception, Contract prices are to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work. It is the intent that whenever the Contractor is required or desires to use any design device, material, or process covered by letters, patent, or copyright, the right for such use shall be provided for by legal agreement with the patentee or owner, however, whether or not such an agreement is made as noted, the Contractor and the surety in all cases shall indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material, or process, or any trademark or copyright, in connection with the work agreed to be performed under the contract, and shall indemnify the City for any costs, expenses, and damages which it may be obligated to pay, by reason of any such infringement, at any time during the prosecution or after the completion of the work.

E. INDEPENDENT CONTRACTORS

The City is interested only in the results obtained and the Contractor shall perform as an independent contractor with the sole control of the manner and means of performing the Work required under the Contract. The Contractor shall complete the Contract according to its own means and methods of work, which shall be in the exclusive charge and control of the Contractor, and which shall not be subject to control or supervision by the City except as to the results of the Work. The Contractor is, for all purposes arising out of the Contract, an independent contractor, and the Contractor or any Subcontractor, agent, employee or representative and employees or agents of any of them shall not be deemed an employee of the City. It is expressly understood and agreed that the Contractor shall in no manner be entitled to any benefits to which the City's employees are entitled including, but not limited to, overtime, any retirement benefits, workers' compensation benefits and injury leave, or other benefits.

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F. PROTECTION OF WORK, PROPERTY, AND PERSONS

The Contractor shall protect and support all water, sewer, gas and other pipes and structures; telephones, cable, fiber optic or electric power lines; all railroad tracks, pavement, building walls, fences, utilities, or other properties, public or private, which may be damaged during the execution of this work. During all operations under the Contract, the Contractor shall carefully protect all trees, shrubbery, sod, plantings, etc., not designated to be removed as part of the work of the Contract, and he shall assume full responsibility for their damage or destruction.

In the event of any damage or injury to any property as a result of the work under this contract, the Contractor shall promptly have the same repaired at his expense to the satisfaction of the Contract Administrator. He shall take all reasonable and proper precautions to protect persons, and property from injury, and any damage. The Contractor must keep fire hydrants and inlets free from unnecessary encumbrance.

Existing sub-surface structures in the vicinity of the work to be done are shown on the plans in accordance with the best information available to the City. The City does not, however, guarantee the completeness or accuracy of this information. Any delay or extra cost to the Contractor due to encountering structures differing from those shown on the plans shall not constitute a claim for extra payment. The location of house sewer connections, water services, underground sprinklers and gas services are not definitely known and no attempt is made, therefore, to indicate such connections and services on the plans.

G. COMPLIANCE WITH LAWS

The Contractor and his employees shall comply with all Federal, State and local laws and regulations, and shall require all subcontractors and all their employees likewise to comply.

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H. FAIR EMPLOYMENT PRACTICES

The Contractor and the Subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of the Contract, with respect to his hire, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, disability, age, ancestry, marital status or national origin, pursuant to the requirements of Section 48-1122, Nebraska Reissue Revised Statutes and Section 48 as amended.

I. FAIR LABOR STANDARDS

The Contractor and the Subcontractors shall maintain Fair Labor Standards in the performance of the Contract, as required by Nebraska Revised Statutes § 73-102 through 104 as amended.

J. EQUAL EMPLOYMENT AND LIVING WAGE

Each bidder shall comply with the requirements of Lincoln Municipal Code Title 11, Equal Opportunity, in the performance of the Work under the Contract. Failure of the successful bidder to abide by the requirements during the contract period shall be deemed to be a substantial and willful violation of the requirements of the Contract Documents, and may result in termination of the Contract.

This contract is subject to the Living Wage Ordinance of the Lincoln Municipal Code. The Ordinance requires that, unless specific exemptions apply or a waiver is granted, all employers (as defined) under service contracts shall provide payment of a minimum living wage to employees. Such rate shall be adjusted annually pursuant to the terms of the Lincoln Living Wage Ordinance of the Lincoln Municipal Code.

Under the provisions of the Lincoln Living Wage Ordinance, the City shall have the authority, under appropriate circumstances, to terminate this contract and to seek other remedies as set forth therein, for violations of the Ordinance.

K. UNEMPLOYMENT CONTRIBUTION

The Contractor and Subcontractors shall pay to the Unemployment Fund of the State of Nebraska unemployment contributions and interest due under the provisions of Section 48-601 through 48-671, Nebraska Reissue Revised

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Statutes of 1943, on wages paid to individuals employed in the performance of the Contract.

L. ASSIGNMENT OF CONTRACTS

No assignment by the Contractor of any contract, or any part thereof, or of the funds to be received thereunder by the Contractor, will be recognized unless such assignment has had the written approval of the Mayor and the Surety has been given due notice of such assignment and has furnished written consent thereto.

Such written approval by the Mayor shall not relieve the Contractor of the obligations incurred by him under the terms of this contract. In addition to the usual recitals in assignment contracts, the following language must be set forth:

"It is agreed that the funds to be paid to the assignee under this assignment are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in said Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials."

M. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of the work shall be secured and paid for by the Contractor unless otherwise stated. Permits, licenses, easements (both permanent and temporary), and rights-of-way of a permanent nature shall be secured and paid for by the City. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the Contract Documents are in variance with any laws, ordinance, rules or regulations, he shall promptly notify the Contract Administrator in writing and any necessary changes shall be accomplished as provided in these specifications.

N. PAYMENT OF BILLS

The Contractor shall pay and shall indemnify and save harmless the City for all labor, materials, equipment, and supplies actually used or rented in the performance of the work, including all insurance premiums on insurance required by the Contract Documents, and shall furnish to the City, when required, satisfactory evidence that all persons, firms, or organizations who have done work or furnished materials, equipment, or supplies in the performance of the Work, or have provided any such required insurance, have

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been fully paid or satisfactorily secured. In case such evidence is not furnished, an amount necessary or sufficient shall be retained from any amounts which may be due the Contractor to meet the claims of the persons, firms, or organizations aforesaid, in addition to any other monies which are to be retained as otherwise specified in the Contract Documents, until the liabilities aforesaid shall be fully discharged or satisfactorily secured.

O. STANDARD MANUFACTURER

Wherever the terms "standard," "recognized," or "reputable" manufacturer are used, they shall be construed as meaning manufacturers who have been engaged in the business of fabricating materials, equipment, or supplies of the nature called for by the specifications for a reasonable period of time prior to the date set for opening bids, and who can demonstrate to the satisfaction of the City Contract Administrator that said manufacturer has successfully installed equipment, materials, or supplies of the type proposed to be furnished in at least three instances, and that the performance of such materials, equipment, or supplies has been satisfactory. Manufacturers who have been engaged in the business of manufacturing said materials, equipment, or supplies for a period of over twelve (12) months prior to the date fixed for opening bids shall, prima facie, be deemed to have been engaged in such business for a reasonable length of time.

P. "OR EQUAL" CLAUSE

Whenever, in any section of the Contract Documents, plans, or specifications, any article, material, or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vendor, the term "or approved equal," if not inserted, shall be implied. The specific article, material, or equipment mentioned shall be understood as indicating the type, function, minimum standard of design, efficiency, and quality desired, and shall not be construed in such a manner as to exclude manufacturer's products of comparable quality, design, and efficiency. The City shall determine the acceptability of articles, materials, or equipment proposed as equals.

Q. SANITARY CONVENIENCES

The Contractor shall supply and maintain adequate sanitary facilities by providing temporary and portable units on the work site to comply with current City-County Health Department and State Department of Health requirements and regulations. These facilities are to be made available for the Contractor's employees and project personnel.

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R. EXECUTIVE ORDERS

Any work to be performed within the limits of, crossing over, or intended to occupy the public right-of-way shall be guided and governed by these standard specifications and general conditions. The Director of Public Works and Utilities reserves the right to approve or disapprove any such work performed within the public right-of-way, even though, as in the case of certain Executive Orders, the City is not a party to the contract. While the City may not actually be party to the contract, this fact shall not in any way relieve the Contractor from wholly satisfying all the standards and conditions set forth in these specifications.

S. PURCHASING AGENT APPOINTMENT AND EXEMPT SALES CERTIFICATE

The Contractor performing the work for the City of Lincoln, Nebraska, except for work performed for the Lincoln Water System, will be issued a Purchasing Agent Appointment and Exempt Sales Certificate signed by the Purchasing Agent of the City. It is to be used by the Contractor and his Subcontractors when purchasing tangible personal property to be actually incorporated into the Contract work, including materials incidental but necessary to the performance of the Contract, provided that such materials are actually incorporated into the contract work. It does not apply to either (1) the purchase of materials to be used but not incorporated into the contract work, including but not limited to form lumber, scaffolding, etc., or (2) the purchase or rental of machinery, equipment, or tools owned or leased by the Contractor or his Subcontractors and used in performing the Contract work.

Purchases qualifying as aforesaid shall be considered as being made by the City. The City shall be obligated to the vendor for the purchase price, but the Contractor or Subcontractor, as the case may be, shall handle all payments therefore on behalf of the City. The vendor shall agree to make demand or claim for payment of the purchase price from the City by submitting an invoice to the Contractor or Subcontractor. Title to all materials and supplies so qualifying shall vest in the City directly from the vendor. Regardless of the method of payment, title shall vest immediately in the City. The Contractor or Subcontractor shall not acquire title to any materials incorporated into the project. All invoices shall bear the Contractor's or Subcontractor's name as agent for the City.

The Contractor may reproduce copies of this Contract Agreement and of the original of the aforesaid Appointment and Certificate to furnish to his suppliers on each invoice or order. The Contractor shall enter the supplier's (the vendor's) name and address, the date, the invoice or order number, a

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description of the items, and the amount, in the spaces provided and shall sign the certificate on the line provided for the "Purchaser's Agent."

The Contractor shall provide each Subcontractor with a copy of this Contract Agreement and of said Appointment and Certificate, and on each Subcontractor's copy of said Appointment and Certificate the Contractor shall add the Subcontractor's name and address in the places provided therefor. Each Subcontractor is hereby given the authority to reproduce copies of the copy of said Appointment and Certificate thus provided him by the Contractor and to furnish the same to his (the Subcontractor's) suppliers on each invoice or order; and the Subcontractor shall complete and sign the same for his purchases in like manner as above set forth for the Contractor.

T. WEED CONTROL

During the construction of the project the Contractor shall control all vegetation so as to comply with City regulations. The areas to be controlled are the public rights-of-way within the project limits and the easements acquired for the construction or any areas (so designated on plans or specifications) as deemed necessary by the Contract Administrator.

No direct payment shall be made for this work, but shall be considered subsidiary to other items of work for which direct payment is made.

VII. PROSECUTION AND PROGRESS OF WORK

A. NOTIFICATION

The Contractor shall keep the Contract Administrator informed, forty-eight (48) hours in advance, of the times and places at which he intends to work in order that inspections may be arranged, lines and grades may be furnished, detours established if needed, and necessary measurements made with the minimum of inconvenience to the Contract Administrator and delay to the Contractor.

Notice of intention to start work in a new location or to resume work on a job which has been suspended temporarily for any reason must be given to the Contract Administrator at least forty-eight (48) hours in advance unless otherwise approved by the Contract Administrator.

For any work that requires construction within the public right-of-way, forty-eight (48) hours advance notice shall be given to the Contract Administrator and the

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City Traffic Engineer. For any work that requires closing of any portion of a street, permission shall be obtained from the City Traffic Engineer, with copies provided to the City Contract Administrator.

Street reconstruction, excavation, or maintenance work which may involve the parking metered district may involve the use of the metered parking stall space will require that the meter be hooded or removed by the Traffic Engineer. The Contractor shall give at least forty-eight (48) hours advance notice of the date and time to the City Traffic Engineer.

The Contractor is responsible for notifying the City Testing Lab to arrange for any necessary testing in advance of contemplated work. The Contractor shall give at least forty-eight (48) hours advance notice of the date and time to the City Testing Lab.

Any work done without proper notification or without being properly located and established by base lines, offset stakes, bench marks, or other basic reference points, may be ordered removed and replaced at the Contractor's expense.

B. COMMENCEMENT

The work under the Contract shall begin after the date stated in the written Notice to Proceed. Such work shall be completed and accepted within the limit and before the completion date stated in the Contract Agreement.

The Contractor shall begin the work at such locations and proceed with the work conforming to such schedules as may be approved by the Contract Administrator.

C. DELAYS

The Contractor shall not be entitled to any claims against the City for damages for hindrances or delays, from any cause whatsoever, in the progress of the work or any portion thereof.

D. SUPERVISION AND DISCIPLINE BY CONTRACTOR

The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and shall have control over construction means, methods, techniques, sequences, coordination, and procedures for all portions of the Work.

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The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Contractor.

VIII. GUARANTEE AND PAYMENT

A. GUARANTEE

1. All Work.

Unless specified otherwise in the Contract Documents, the Permittee shall guarantee the work for a period of one year after: Final Completion of the Work or a designated portion thereof. Nothing contained in this paragraph shall establish a period of limitation with respect to other obligations that the Permittee might have under the Contract Documents.

2. Utility Construction.

The Permittee guarantees all utility construction, against defects in material or workmanship for a period of two (2) years from the date of the approval and acceptance by the proper authority of the Work performed under the Contract Documents; and he also guarantees against damage, during the two-year (2) guarantee period, structures, all backfilled trenches and all sidewalks, pavement, and driveways judged by the City Contract Administrator to have been a part of, in close proximity to, or built subsequent to the work performed under the Contract Documents. The Permittee guarantees all traffic and non-owner supplied street lighting materials for two (2) years from the date of approval and acceptance. The Permittee shall bear the entire expense and cost of all repairs, which may from imperfection in work or material, become necessary within that time.

3. Asphaltic Paving and Resurfacing.

The Permittee guarantees all paving construction against defects in material or workmanship for a period of two (2) years from the date of the approval and acceptance of the work performed under the Contract Documents. The Permittee shall bear the entire expense and cost of repairing any surface cracks that develop in the asphalt surface within such guarantee period. The cracks shall be carefully cleaned of foreign material and filled with emulsified asphalt crack filler or asphalt cement.

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All of this work shall be performed at the direction and to the satisfaction of the City Contract Administrator.

4. Portland Cement Concrete Pavement

The Permittee guarantees all paving construction against defects in materials or workmanship for a period of two (2) years from the date of the approval and acceptance of the work performed under the Contract Documents.

The Permittee shall bear the entire expense and cost of repairing any random surface cracks or spalling that develops in the finished slab. The cracks shall be routed and filled with a concrete weld material that has a similar color as the concrete. The Permittee shall reseal all transverse and longitudinal joints that are showing signs of any separation. All such joints shall be resealed with the same product that the Contract required, or a similar substitute as approved by the City Contract Administrator.

5. Procedure

During such guarantee period, if the City discovers that any of the Work is not in accordance with the Contract Documents, the City shall notify the Permittee in writing. The City shall give such notice promptly after discovery of the condition. Upon such notice, the Permittee shall promptly correct the work, at his expense. The Contractor shall extend the guarantee period for any portions of Work first performed after Substantial Completion. The Permittee shall extend the guarantee period for the number of days between Substantial Completion and the actual completion of such Work. All obligations shall survive acceptance of the Work under the Contract and termination of the Contract.

If at any time within the period of guarantee, any of the Work included in the guarantee shall require any repair or reconstruction, the City Contract Administrator shall notify the Permittee to make the repairs required. Upon receipt of such notice, the Permittee shall proceed with such repairs and shall complete the same within a time fixed by the City Contract Administrator, all at the Permittee's cost and expense.

If the Permittee shall neglect or fail to proceed with such repairs, then the City shall have the right to cause such repairs to be made in such manner as it deems best and the whole cost thereof shall be paid directly by the Permittee or reimbursed by him to the City; and if the Permittee neglects or refuses to do so, such cost shall be paid by the Contractor's Surety on

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the performance bond required by the Contract Documents. The liability of such bond shall continue during the full guarantee period.

It shall be the duty of the Permittee to notify the City Contract Administrator in writing within thirty (30) days prior to the expiration of the guarantee period to make a final inspection of the work. If the Permittee does not furnish such notice, the obligation to maintain such work in proper condition shall continue in force until such notice shall have been issued as above provided. If the end of the guarantee period falls between December 1st and April 30th, then such period may not be considered as expired until May 1st following, and the thirty (30) days' notice must be served upon the City Contract Administrator the month preceding that date.

B. SUBSTANTIAL COMPLETION

When the Contractor considers that the Work (or a portion thereof that the City agrees to accept separately) is substantially complete, the Contractor shall prepare and submit to the City Contract Administrator a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the City Contract Administrator shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the City Contract Administrator's inspection discloses any item that does not comply with the Contract Documents (including any items on the Contractor's list) the Contractor shall complete or correct such item upon the City Contract Administrator's written notification. Once corrected or completed, the Contractor may submit a request to the City Contract Administrator for another inspection to determine Substantial Completion.

When the Work or designated portion thereof is substantially complete, the Contract Administrator may prepare a Certificate of Substantial Completion. Upon the City's approval, such Certificate shall establish: (1) the date of Substantial Completion; (2) responsibilities of the Contractor for security, maintenance, heat, utilities, damage to the Work and Insurance; and (3) the time for the Contractor to finish all items on the list accompanying the Certificate. Guarantees provided in the Contract Documents shall commence on the date of Substantial Completion unless otherwise provided in the Certificate of Substantial Completion. The Contractor shall accept the Certificate of Substantial Completion and the responsibilities assigned in such certificate by

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signing the same. The Contract Administrator shall submit the Certificate to the Contractor for such acceptance.

The Contractor shall secure and deliver to the City any written guarantees from Subcontractors, Sub-Subcontractors and suppliers. Such guarantees shall state the period of guarantee as required by the Contract Documents or otherwise as the City has agreed. The Contractor guarantees all of the Work regardless of separate guarantees by Subcontractors at any tier.

C. ACCEPTANCE OF WORK

All work under and the requirements of the Contract Documents shall be deemed as having been fulfilled and met when the work is accepted by the City by formal action of the City Contract Administrator that the work be finally accepted. Upon acceptance of the work by the City, ownership of the work shall pass to the City.

No work shall be accepted until the City Contract Administrator has completed the final inspection and notified the Contractor of satisfactory completion of same; if any areas of concern for workmanship or materials exist at the time of final inspection, the City Contract Administrator shall notify the Contractor, in writing, of remaining deficiencies.

The Contractor shall correct all deficiencies. No work shall be accepted until the final completion of the whole; and inspection during construction or partial payment for work or materials shall not imply any acceptance of same.

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IX. MISCELLANEOUS

A. AUDIT/EXAMINATION OF RECORDS

Whenever the City enters into any type of contractual arrangement, the Contractor's records shall, upon reasonable notice, be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by a City's representative or an outside representative engaged by the City. The City or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment.

Contractor's records, as referred to in this contract, shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may, in the City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the City in connection with the contractor's dealings with the City (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of:

1. Contractor compliance with contract requirements,
2. Compliance with ethical practices, and
3. Compliance with provisions for pricing change orders, invoices or claims submitted by the contractor or any of his payees.

The Contractor shall require all payees (examples of payees include subcontractors and material suppliers) to comply with the provisions of this

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article by including the requirements hereof in a written contract agreement between the Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Subcontractors' material suppliers, etc. The Contractor will cooperate fully and will cause all related parties and all of Contractor's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to the City from time to time whenever requested, in an expeditious manner, any and all such information, materials and data.

The City's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

If an audit inspection or examination in accordance with this article discloses overpricing or overcharges (of any nature) by the Contractor to the City in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the City's findings to Contractor.

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X. INSURANCE REQUIREMENTS

A. WAIVERS OF SUBROGATION

The City and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Consultant, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property Insurance obtained pursuant to this Section X or other property Insurance applicable to the Work, except such rights as they have to proceeds of such Insurance held by the City as fiduciary. The City or Contractor, as appropriate, shall require of the Consultant, the Consultant's sub-consultants, separate contractors, if any, and the subcontractor, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of Subrogation by endorsement or otherwise. A waiver of Subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the Insurance premium direct or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

B. INSURANCE REQUIREMENTS FOR THESE CONTRACTS

To obtain the current Insurance requirements for these contracts, go to the City's website at:

<http://www.lincoln.ne.gov/city/finance/purch/index.htm>

The duties and obligations imposed by these General Provisions and the right and remedies available hereunder, and, in particular but without limitation, the guarantees and obligations imposed upon the Contractor and the rights and remedies available to the City hereunder shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed or available by law, by special guarantee or by other provisions of the contract documents.