# CITY OF LINCOLN, NEBRASKA,

## GENERAL CONDITIONS AND REQUIREMENTS

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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
AC - Alternating Current
ACI - American Concrete Institute
ADA - Americans with Disabilities Act
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
BC - Bundled Cable
Db - Decibel
EEI - Edison Electric Institute
EEO - Equal Employment Opportunity
EIA - Electronic Industries Association
FHWA - Federal Highway Administration
GRS - Galvanized Rigid Steel
HDPE - High Density Polyethylene
HZ - Hertz
ICEA - Insulated Cable Engineers Association
IEC - International Electrotechnical Commission
IES - Illuminating Engineering Society
IMSA - International Municipal Signal Association
IPCEA - Insulated Power Cable Engineers Association
IPS - Iron Pipe Size
ISO - International Standards Organization
LED - Light-emitting diode
LES - Lincoln Electric System
LPD - Lincoln Police Department
LSP - Lincoln Standard Plan
MUTCD - Manual Uniform Traffic Control Devices
NDOT - Nebraska Department of Transportation
NESC - National Electrical Safety Code
NEMA - National Electrical Manufacturers Association
NEC - National Electrical Code
NDOT - Nebraska Department of Transportation
NEC - National Electrical Code
NEMA - National Electrical Manufacturers Association
NESC - National Electrical Safety Code
I. DEFINITIONS AND TERMS (Continued)

B. ABBREVIATIONS (Continued)

NM   - Nanometer
OSHA - Occupational Safety and Health Administration
OTDR - Optical Time Domain Reflectometer
PVC  - Polyvinyl Chloride
RMS  - Root Mean Squared
SCIE - Society of Cable Telecommunications Engineers
SJOW - Stranded Junior service Oil-resistant Weather-resistant
SSP  - State Standard Plan
TCLP - Toxicity Characteristic Leaching Procedure
THHN - Thermoplastic High Heat-resistant Nylon-coated
TIA  - Telecommunications Industry Association
UL   - Underwriters Laboratories
USASI - USA Standards Institute
UV   - Ultraviolet

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. Assistant Director of Transportation (City Engineer) Only the City Engineer or his/her duly authorized representatives.

4. Beginning of Work Performing Work on site which may include, but is not limited to, material and equipment staging, construction entrance and other erosion control best management practices installation, utility potholing, placing traffic control, saw cutting, excavation, pavement removal and similar Work that is shown on the plans and as specified

5. 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.

6. 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.

7. 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.

8. Business Day Every official work day which normal business operations are conducted, Monday through Friday, except legal holidays observed by the City (see City Holiday).

9. Calendar Days Every day shown on the calendar. (Saturdays, Sundays and Holidays included).
I. DEFINITIONS AND TERMS (Continued)

C. DEFINITIONS (Continued)

10. **Change Order** shall mean a written instrument the City’s Project Manager issues and the Mayor and the Contractor approve to state the City and Contractor’s agreement for a change in the Work. All Change Orders shall specify the method of payment, if any. All Change Orders shall specify adjustments in the Contract Sum and/or Contract Time, if any.

11. **City** The City of Lincoln, Nebraska, and shall include the City's authorized representative.

12. **City Holiday** A City Holiday shall be defined as those holidays observed by the City as authorized in Section 2.76.370 of the Lincoln Municipal Code.

13. **City’s Project Manager** shall be the person designated by the Department Director bidding the Project. The City’s Project Manager is acting as an agent of the City during the construction period and shall decide all questions which may arise as to Contract fulfillment on the part of the Contractor. The City’s Project Manager may be either City employee or Consultant.

14. **City’s Engineering Inspector** is an appointed agent of the City’s Project Manager to inspect all Work done. The City’s Engineering Inspector is appointed for the benefit of the City and any inspections shall be for the benefit of the City. The City’s Engineering Inspector may be either City employee or Consultant.

15. **Claim** shall include a demand or assertion by the City or the Contractor seeking an adjustment to or interpretation of Contract terms, payment, time or other matters related to the Contract. The party making the Claim shall substantiate any such Claim.

16. **Consultant** shall mean the designated architect, engineer, or professional contracted by the City to provide design, construction, and/or other professional services related to the project.

17. **Contract** The written agreement between the City 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.

18. **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.

19. **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.

20. **Contract Completion Date** The calendar date stipulated in the Contract by which the proposed Work shall be complete.

21. **County** Lancaster County, Nebraska.

22. **Easement** A right to use or control property for a designated purpose.
I. DEFINITIONS AND TERMS (Continued)

C. DEFINITIONS (Continued)

23. **Engineer** An individual who is professionally licensed in Nebraska.

24. **Equipment** All machinery, tools, supplies necessary for maintenance, and apparatus necessary for the construction of the Work.

25. **Extra Work** An item of Work not originally a part of the Contract, but necessary for completion and/or execution of the Contract.

26. **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.

27. **General Conditions** Standard provisions for all City 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 purchase order/Contract issued by the City agrees that the provisions included within the Invitation for Bid shall prevail.

28. **Laboratory** Any laboratory as may be designated by the City’s Project Manager for the purpose of testing materials and/or Work performed.

29. **Liquidated Damages** The amount prescribed in the Contract documents to be paid to the City by the Contractor, or to be deducted from any payments due to the Contractor, for each calendar day or Working day, whichever is specified in the Contract documents, beyond the stated completion date or any extension thereof. Liquidated damages will represent the agreed damages to the City and shall not be construed as a penalty.

30. **Lump Sum** The total price of a group of items which is priced as a whole.

31. **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.

32. **May** Permissive (see Shall).

33. **Modification** Any authorized written order the City’s Project Manager issued for a minor change in the Work and shall be synonymous with Field Orders and/or Field Modifications.

34. **Notice to Proceed** Written notice instructing the Contractor to proceed with the Work.

35. **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.

36. **Project** The total construction related to the Work provided by this Contract. The Project may include construction by the City or by separate Contractors.

37. **Proposal** The properly signed written (or electronic if authorized) offer of the Bidder to perform all the Work.

38. **Retainage** The amount of monies held by the City until the Contract is successfully completed.
I. DEFINITIONS AND TERMS (Continued)

C. DEFINITIONS (Continued)

39. Right-of-Way  Land, property, or interest therein devoted to or acquired for the purposes of public streets or utilities.

40. Shall  Mandatory. (see May)

41. Special Provisions  Additions to or modifications of the standard specifications and supplemental specifications covering conditions peculiar to the Work.

42. Specifications  Any written requirement for materials, equipment, construction systems, standards or Workmanship for the Work, including performance of related services.

43. Standard Specifications  The officially adopted Standard Specifications City of Lincoln, Nebraska.

44. Subcontractor  An individual, entity, firm, partnership, or corporation to whom the Contractor sublets a portion of the Work.

45. 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.

46. Substantial Completion  shall mean the stage when the City’s Project Manager 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.

47. Supplemental Specifications  Specifications adopted subsequent to publication of the standard specifications which may add to, delete, or modify the standard specifications.

48. 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 there from.

49. 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.

50. 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

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.

C. QUANTITIES

Bidders shall satisfy themselves as to the correctness of any quantities listed in the proposal form and shall not, after submission of their proposal, dispute such quantities, nor assert that there was any misunderstanding in regard to the nature or amount of Work to be done.

The quantities on projects involving unit prices and materials to be furnished under this Contract are approximate and are to be used only as a basis for estimating the probable cost of the Work and for comparing the proposals. The City may omit portions of the Work, to increase or decrease the quantities as deemed necessary or desirable, and the actual amount of Work to be done and material to be furnished may differ from the estimated quantities, and the basis for payment under this Contract shall be the actual amount of Work and materials done.
II. PROPOSAL REQUIREMENTS AND CONDITIONS (Continued)

D. UNIT PRICES

On a lump sum or partial lump sum Contract where it is anticipated that unforeseeable changes may occur in the construction covered by the lump sum portion of the bid and which will require more or less quantities than are indicated on the Contract plans, the cost of said more or less quantities may be covered by supplemental unit bid prices in the proposal form. The City reserves the right to reject any or all such supplemental unit prices which it deems to be excessive or unreasonable. In the event of such rejection and subsequent need for said more or less Work, the Contract price shall be adjusted by change order in the manner described in these specifications.

In cases where any part or all of the bidding is to be received on a unit price basis, the quantities stated are not intended to govern. The quantities stated, on which unit prices are so invited, are approximate only and each Bidder will be required to make his own estimates of amounts and to calculate his unit price bid accordingly. Bids will be compared on the basis of the stated number of units in the proposal form. Such estimated quantities, while made from the best information available, are approximate only. Payment on the Contract will be based on actual number of units installed on the completed Work.

E. ALTERNATIVES

When provided in the proposal form, Bidders may bid on one or more alternatives at his own discretion unless otherwise directed in these specifications or in the Special Provisions.

F. SUBCONTRACTORS

The Contractor shall notify the City’s Project Manager in writing 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’s Project Manager shall have the right to approve or disapprove the use of any Subcontractor. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City. The Contractor agrees to be fully responsible to the City for the acts or omissions of his Subcontractors and of anyone employed directly or indirectly by him or them and this Contract obligation shall be in addition to the liability imposed by law upon the Contractor.

The Contractor agrees to bind every Subcontractor (and every Subcontractor of a Subcontractor) by the terms of the Contract.

G. CONSTRUCTION PERFORMANCE AND CONSTRUCTION PAYMENT BONDS

Within 10 business 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.
II. PROPOSAL REQUIREMENTS AND CONDITIONS (Continued)

H. FAILURE TO EXECUTE THE CONTRACT

It is agreed by the Bidder that upon a failure to enter into the Contract and furnish the necessary Construction Performance and Construction Payment Bond, within 10 business days, the amount of the Bidder’s security may, at the discretion of the City, become the property of the City and will be retained, as damages to the City. The award of the Contract may then, at the discretion of the City, be made to the next lowest responsible bidder, or the Work may be rebid, or may be constructed by the City in any legal manner.
III. SCOPE OF WORK

A. INTENT OF DOCUMENTS

The intent of the documents is to include all labor and materials except that which is specifically 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 City’s Project Manager any conflicts between various parts of the Contract Documents or questions pertaining to procedures, traffic control or material.

Special Provisions, supplementing or modifying the specifications, whether incorporated in or furnished by addendum to the Contract Documents, shall be considered an integral part of same. Said special provisions shall supersede the specifications.

If the plans and specifications should be found to be contradictory in any part, the specifications 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 the City’s Project Manager and the City’s Project Manager’s decision thereon shall be final. Correction of errors or omissions on the drawings or specifications may be made by the City’s Project Manager when such correction is necessary for the proper execution of the Work.

The City’s Project Manager will furnish the Contractor electronic copies of drawings and specifications.

The Contractor may be furnished additional instructions and detail drawings by the City’s Project Manager 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.
III. SCOPE OF WORK (Continued)

B. EXTRA WORK

In the event portions of such Work are determined by the City’s Project Manager to be covered by some of the various items for which there is a bid price or combinations of such items, the remaining portion of such Work will be considered as Extra Work. Extra Work also includes Work specifically designated as Extra Work in the plans or specifications. The Contractor shall do such Extra Work upon receipt of a written order from the City’s Project Manager.

Extra Work shall be paid for as determined by the City’s Project Manager and shall be on one of the following bases:

1. Unit prices contained in the Contractor's original bid.

2. Supplemental unit prices agreed upon by the City’s Project Manager and the Contractor prior to authorization of the change.

3. An agreed lump sum.

4. The actual cost of labor, direct overhead, materials, supplies, equipment and other services required to complete the Work so ordered. In addition, there may be added an amount, to be agreed upon but not to exceed fifteen percent of the actual cost of the Work, to cover the cost of general overhead and profit.

5. If a Subcontractor does the Work, there may be added an amount, to be agreed upon but not to exceed five percent of the Subcontractor’s billing, to cover the cost of general overhead and profit.

It shall be expressly understood and hereby agreed to by the Contractor that no claim for Extra Work will be recognized by the City unless same has been authorized in writing by the City’s Project Manager and unless claim for such added Work has been filed by the Contractor prior to preparation of the final estimate. The claim should be filed within 14 business days after the need for the Extra Work is recognized.

C. CHANGES IN THE WORK

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 and have no effect on the amount due or the time required to perform the Work, they may be authorized by the City’s Project Manager. The request for such minor changes shall be documented in writing by the City’s Project Manager. 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 executed change order.
III. SCOPE OF WORK (Continued)

D. ROCK EXCAVATION

Rock Excavation shall be excavation in solid rock formations in the original bed or well-defined ledges more than 12” in thickness, or detached solid masses of stone more than 1/2 cubic yard in volume which cannot be excavated, loosened or removed by any process other than by drilling or by the use of pneumatic equipment. No soft or disintegrated rock, or rock that has been broken or previously blasted, or broken stone in rock fill or elsewhere, will be classified as rock excavation.

Unless indicated in the proposal, payment will be made for "Rock Excavation" as an Extra Work item.

E. HAUL OR OVERHAUL

Unless specified in the proposal, no payment will be made for "Haul" or "Overhaul." The cost of hauling material to or from the Work regardless of distance shall be considered subsidiary to and a part of the applicable Contract bid price.

F. 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.

All sewers, conduits, pipes and appurtenances, and all tanks, pump wells, chambers, buildings and other structures shall be kept clean during construction; and as the Work or any part thereof approaches completion, the Contractor shall systematically and thoroughly clean and make any needed repairs to them. He shall furnish, at his own expense, suitable tools and labor for removing all water and cleaning out all dirt, mortar and foreign substances. The City’s Project Manager will not approve the final estimate of any portion of the Work until after Final Completion is achieved and the Work found satisfactory. The City may remove or cause the removal of the rubbish, surplus materials, and traffic control devices and deduct the cost from the final estimate or charge the cost to the Contractor if the cleanup is not properly performed by the Contractor within 3 business days of written notice from the City’s Project Manager.

G. ACCESS TO THE SITE OF WORK

The Work included in the Contract is in the public right-of-way or easements furnished by the City of Lincoln. The City will guarantee necessary access for the Contractor to carry on the Work of his Contract. The Contractor will be permitted to use only as much of the right-of-way as shall be determined by the City’s Project Manager for the Contractor to carry on his Work.
III. **SCOPE OF WORK** (Continued)

H. **OWNERSHIP OF SALVAGED MATERIALS**

Materials removed and salvaged in accordance with the plans, or as directed by the City’s Project Manager, shall be the property of the City and the Contractor shall load, transport, unload, and neatly stockpile the materials at the location(s) designated in these specifications, in the special provisions, or as directed by the City’s Project Manager. Salvaged materials damaged due to the Contractor’s negligence will be replaced with new materials at no additional cost to the City or deducted from the final estimate by the City’s Project Manager. The Contractor shall furnish salvage receipts to the City’s Project Manager if required by these specifications.

I. **BORROW AND WASTE SITES**

Unless borrow or waste sites are designated on the plans or specified in the special provisions, the Contractor shall be responsible for selecting an appropriate site. These sites shall be maintained by the Contractor at no cost to the City.
IV. CONTROL OF MATERIALS

A. MATERIAL STORAGE

The Contractor shall store all Materials to preserve their quality and fitness for the Work and to facilitate inspection. The Contractor shall store all material under the general supervision and direction of the City’s Project Manager. The City’s Project Manager, when needed, may order the Contractor to store Materials under cover or on platforms or as the City’s Project Manager 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 City’s Project Manager.

All storing of equipment and materials shall be within limits of acquired easements or the public right-of-way. The Contractor shall not stage or store any equipment or materials outside of these areas without prior approval by the City’s Project Manager. If the Contractor requires additional space outside acquired easements or right-of-way for storage of equipment and material during the duration of the project, then the Contractor, at their expense, shall be responsible to secure temporary property rights from the adjacent property owners and shall provide a copy of the agreement(s) to the City’s Project Manager. The Contractor’s use of the public right of way for parking equipment or materials storage shall be approved by the City’s Project Manager. Temporary placement of equipment and materials in the public right of way shall allow vehicle lines of sight and setbacks to be maintained. Any excavated material shall have required erosion control protection in place until its removal or areas backfilled with cover established. Payment for such erosion control shall be subsidiary to other items.

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’s Project Manager 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.

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.

Sampling and testing of materials shall be done in accordance with the latest version of the “City of Lincoln’s QC/QA Materials Sampling Guide” in affect at the time of the contract letting, unless otherwise stipulated in the contract documents or by the City Engineer.
IV. CONTROL OF MATERIALS (Continued)

C. MATERIALS AND WORKMANSHIP

Unless otherwise stipulated in the specifications, all Workmanship, equipment, materials, and articles incorporated in the Work covered by this Contract are to be new and of the best grade of their respective kinds for the purpose. Before placing orders for equipment, the Contractor shall furnish to the City’s Project Manager for his approval the name of the manufacturer of machinery, mechanical and other equipment, which he contemplates installing, together with their performance capacities and other pertinent information. If not otherwise provided, the performance called for in this Contract shall be furnished and performed in accordance with well-known established practices and standards recognized by architects, engineers, and the trade. Materials installed or used without approval shall be at the risk of subsequent rejection.

No material of any kind shall be installed in the project until the City’s Project Manager 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’s Project Manager.

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

D. ALTERATIONS AND SUBSTITUTIONS

The City’s Project Manager 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’s Project Manager 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’s Project Manager approves such request for substitution in writing. Upon any substitution of lesser priced goods, the City’s Project Manager shall prepare 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 affect major changes in the function or general design.
IV. CONTROL OF MATERIALS (Continued)

E. MATERIALS SUPPLIED BY THE CITY

Material or equipment furnished by the City for installation by the Contractor will be furnished in good condition and ready for installation. This material or equipment shall be picked up by the Contractor at a location within the City of Lincoln designated by the City’s Project Manager.

Excess materials supplied by the City shall be returned by the Contractor to the point of receipt. The Contractor shall be issued a receipt verifying condition and measures of material returned. Materials damaged by the Contractor will not be accepted by the City and the Contractor shall be responsible for the cost or replacement of any such materials.

F. 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:

1. Secure or otherwise isolate such condition.
2. Stop all Work in connection with such condition and in any area affected thereby.
3. Notify the City’s Project Manager, AND any regulatory agency required by law. The City’s Project Manager 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

A. AUTHORITY OF ASSISTANT DIRECTOR OF TRANSPORTATION (CITY ENGINEER)

The City Engineer is empowered to act for the Director of Transportation and Utilities in implementation of Lincoln Municipal Code 2.35.050 “Supervise Work on Public Property; Enforcement.”

When the term City Engineer is used in these specifications, only the City Engineer or his/her duly authorized representatives, referred to as the “City Engineer,” shall approve any changes or alterations. The list of duly authorized representatives shall be as enacted by Public Work’s most current Directorial Order.

B. AUTHORITY OF THE CITY’S PROJECT MANAGER

The City’s Project Manager in this Contract is acting as an agent of the City during the construction period. The City’s Project Manager shall be the judge of the character, nature and fitness of all work done and materials furnished under this contract, and of the amount, quality, and classification of the several kinds of work for which payment is made. The City’s Project Manager shall decide as to the meaning, intent, and performance of this contract. The entire work shall be done to the City’s Project Manager’s satisfaction. The City’s Project Manager shall decide all questions that may arise as to Contract fulfillment on the part of the Contractor and the City’s Project Manager’s decisions thereon shall be final and conclusive. Such determination shall be a condition precedent to the right of the Contractor to receive any payments hereunder. The City’s Project manager shall receive advice regarding fulfillment of the Contract and acceptability of the Work from others including, but not limited to City’s Engineering Inspector, Consultants, other City divisions and departments.

The City’s Project Manager 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’s Project Manager deems necessary.

The City’s Project Manager shall decide questions, which may arise as to quality and acceptability of materials furnished and Work performed. The City’s Project Manager shall hold the Contractor strictly to the intent of the Contract Documents in regard to the quality of 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’s Project Manager will not be responsible for the construction means, controls, techniques, sequences, or procedures, except that those procedures specifically called for in the Contract Documents shall be strictly followed. The City’s Project Manager shall not be deemed authorized to modify, alter, or waive any provisions related to the City Engineer.
V. CONTROL OF THE WORK (Continued)

C. AUTHORITY OF THE CITY’S ENGINEERING INSPECTOR

The City’s Engineering Inspector is an appointed agent of the City’s Project Manager to inspect all Work done. The City’s Engineering Inspector will keep the City’s Project Manager informed as to the progress of the Work and the manner in which it is being done. Such inspection may extend to any or all parts of the Work and materials furnished, but the City’s Engineering Inspector will not be authorized to revoke, alter, enlarge, or relax the provisions of these specifications. The City’s Engineering Inspector is appointed for the benefit of the City and any inspections shall be for the benefit of the City. The presence of the City’s Engineering Inspector shall not be used or construed as a waiver of any of the Contractor’s obligations pursuant to the Contract. Failure of a City’s Engineering Inspector to call the attention of the Contractor to faulty Work or lack of compliance with the plans or specifications shall not constitute acceptance of said Work. Any advice which the Inspector may give the Contractor will in no way be construed as binding the Engineer or City in any nor releasing the Contractor from the fulfillment of the terms of the said Contract. The City’s Engineering Inspector shall not be deemed authorized to accept notices or waive any of the provisions hereof or modify any order or orders of said City’s Project Manager or City Engineer.

1. The City’s Engineering Inspector shall be authorized to:

   a. Call the Contractor’s attention to Work or materials that do not conform to the Contract.

   b. Reject materials until the City’s Project Manager is notified and decides the questions at issue.

2. The City’s Engineering Inspector shall not be authorized to:

   a. Revoke, alter, enlarge, or relax the provisions of the Contract.

   b. Approve or accept any portion of the completed project.

   c. Act as foreperson or perform any duties for the Contractor.

D. PRE-CONSTRUCTION AND PROGRESS CONFERENCE

Upon receipt of notification from the City’s Project Manager, the Contractor or the Contractor’s authorized representative shall, at no cost to the City, appear at a location and time designated by the City’s Project Manager for the purpose of discussing pre-construction scheduling, traffic control procedure or methods, and project progress during construction. If a pre-construction open house is scheduled for the project, the Contractor shall attend the pre-construction open house, at no cost to the City, at a location and time designated by the City’s Project Manager. The Contractor or the Contractor’s authorized representative shall provide, at no cost to the City, any data sheets, construction schedules, or other information deemed necessary by the City’s Project Manager.
V. CONTROL OF THE WORK (Continued)

E. 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 City of Lincoln Urban Development – Parking Services at least 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.

The City may require the Contractor to coordinate with other Contractors, Public or Private Entities at or near the Work site. Contractors working in close proximity shall cooperate with each other.

F. 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 City’s Project Manager.

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’s services and expenses.

If a portion of the Work has been covered that the City’s Project Manager has not specifically requested to observe prior to it’s being covered, the City’s Project Manager 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.
V. CONTROL OF THE WORK (Continued)

G. CORRECTING WORK

The Contractor shall promptly correct Work rejected by the City’s Project Manager 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’s services and expenses made necessary thereby. The Contractor shall remove immediately from the site portions of the Work that are not in accordance with the requirements of the Contract Documents.

If the Contractor fails to correct non-conforming Work within a reasonable time, fixed by written notice from the City’s Project Manager, the City may correct it in accordance with the Contract Documents. If the Contractor does not proceed with correction of such non-conforming Work, the City may remove it and store the salvageable materials or equipment at the Contractor’s expense. If the Contractor does not pay costs of such removal and storage within ten business days after written notice the City may sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages owed by the Contractor, including compensation for the City’s Project Manager’s services and expenses made necessary thereby. If such proceeds of sale do not cover costs owed by the Contractor, the City shall automatically reduce the Contract Sum by the deficiency. If the remaining Contract amounts are not sufficient to cover such costs, the Contractor shall pay the difference to the City.

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 there are unremedied damages caused by the Contractor, the City may offset the remaining Contract Sums to cover those damages and/or take any measures allowed by law to remedy the damages.

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. Upon such election, the City and the Contractor shall reduce the Contract Sum as appropriate and equitable. The City and the Contractor shall make such adjustment whether or not the City has made final payment under the Contract Documents. The Contractor shall pay the difference, if any, to the City within 10 business days from such adjustment.

H. 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.
V. CONTROL OF THE WORK (Continued)

I. SHOP DRAWINGS

The Contractor, as soon as possible, shall submit to the City’s Project Manager 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 the City’s Project Manager’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's Project Manager 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.

The Contractor shall submit shop drawings in a format approved by the City to City’s Project Manager who, after checking, will retain a copy and return a reviewed document to the Contractor. The City’s Project Manager'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 City’s Project Manager. 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 City’s Project Manager will not relieve the Contractor of any responsibility for the proper performance or functioning of the completed project.

The Contractor shall obtain the City’s Project Manager’s approval before beginning any portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals.
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, defend 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 injury to or destruction of tangible property, including the loss of use resulting there from 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.

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, defend 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.

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, sprinkler systems, 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.

Where necessary, the Contractor may have to hand dig around trees to prevent damage to tree roots. Contractor shall protect all trees within the project area. Any form of protection chosen by the Contractor, such as fences, ropes, etc., shall be furnished, erected, and maintained by the Contractor and be subsidiary to other bid items. Any trees that appear to have significant root damage caused by excavation or any tree that needs trimmed in or from the public right-of-way, shall be coordinated with the Project Manager or their representative who shall contact the City Forestry Section to verify any necessary actions in saving, trimming, or removing the damaged tree.

Contractor shall also protect existing street surfaces, trails/sidewalks, curbs and public right-of-way areas that are used for staging/storing equipment, completing construction or used for equipment access at their own expense. The Contractor shall determine their own means and methods of protecting the streets, sidewalks, driveways, curbs, public right-of-way, etc. In all circumstances, absolutely no indentations, gouges, ruts, or other damage to asphalt or concrete surfaces greater than 1/8 inch shall be permitted. The Contractor shall be responsible for repair or replacement of any damaged street surfaces, sidewalks, driveways, etc. that are to remain in place at their own expense, to the City’s Project Manager’s satisfaction. Heavy equipment shall not be used on sidewalks or over potential areaways.

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 City’s Project Manager. If there are unremedied damages to public property caused by the Contractor, the City may offset the remaining Contract Sums to cover those damages and/or take any measures allowed by law to remedy the damages. 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.
VI. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC (Continued)

F. PROTECTION OF WORK, PROPERTY, AND PERSONS (Continued)

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.

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 Statutes of 1943, on wages paid to individuals employed in the performance of the Contract.
VI. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC (Continued)

L. ASSIGNMENT OF CONTRACTS

No assignment by the Contractor of any Contract, or any part thereof, or of the funds to be received there under 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 City’s Project Manager 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 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.
VI. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC (Continued)

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’s Project Manager 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 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. No direct payment shall be made for this Work, but it shall be considered subsidiary to other items of Work for which direct payment is made.

R. EXECUTIVE ORDERS/PRIVATE CONSTRUCTION AGREEMENTS

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 Transportation 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 or Private Construction Agreements, 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.
VI. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC (Continued)

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 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 therefore. 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.

Any portion of this project used for providing water service, such as pipe and fittings for water mains, is subject to sales and use taxes. The remainder of this project is exempt from sales and use taxes.

No one shall issue the Purchasing Agent Appointment (PAA) certificate forms except the Purchasing Agent. When the contractor requests these forms they need to inform the Purchasing Agent what materials they are buying and for which project (identify with project description and number).
VI. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC (Continued)

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 City’s Project Manager.

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

U. SNOW REMOVAL

During the construction of the project, the City’s Project Manager will advise the Contractor of the level of maintenance that shall be required during construction. The Contractor shall be responsible for snow removal and any material spreading that may be needed to provide safe access to the residences or businesses within the limits of the project. The Contractor shall notify the Engineer regarding the manpower, equipment and material necessary to attain that level of maintenance. Payment shall be made for this work as Extra Work.

V. AUDIT BOARD

The Contractor shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to the contract/order, as allowed by law.

W. E-VERIFY

In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section.
VII. PROSECUTION AND PROGRESS OF WORK

A. NOTIFICATION

The Contractor shall keep the City’s Project Manager informed, a minimum of 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 City’s Project Manager 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 City’s Project Manager at least 48 hours in advance unless otherwise approved by the City’s Project Manager.

For any Work that requires construction within the public right-of-way, 48 hours advance notice shall be given to the City’s Project Manager. For any Work that requires closing of any portion of a street, permission shall be obtained from the City Engineer, thru the City’s Project Manager.

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 final 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 City’s Project Manager. The Work and the determination, count and reporting of calendar days or working days shall commence on the Beginning of Work date as determined by the City’s Project Manager.

The period of time between Notice to Proceed and Beginning the Work shall not be counted toward the contract time for work associated with, but not limited to, shop drawings and submittals, materials procurement, preconstruction meetings and work outside the limits of the project. Contractor may submit a written request to the City’s Project Manager to exclude environmental commitments from the contract time allowance if Work such as netting of bridges, topping of trees, or other Work associated with environmental commitments is necessary prior to the Beginning of Work dates.

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.
VII. PROSECUTION AND PROGRESS OF WORK (Continued)

D. SUPERVISION AND DISCIPLINE BY CONTRACTOR

The Contractor shall supervise and direct the Work using their 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.

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 the Contractor.

E. WINTER CONSTRUCTION - SUSPENSION OF WORK

Suspension of Work for the winter period is due to general unsuitable weather, conditions unsuitable for prosecution of the Work, and other reasons that are in the public interest. Suspension of Work for the winter period is not automatic and shall be requested by the Contractor.

The winter period shall be considered from December 1st to March 15th for Utility Work.

The winter period shall be considered from November 1st to April 1st for Paving Work.

1. Suspension of Work during the winter construction period may be requested by the Contractor. The request must be made in writing to the City’s Project Manager and shall include the beginning date and duration. If Work is to be resumed prior to expiration of time requested, 48 hours written notice of such intent will be required.

2. The Contractor shall be required to restore all vehicular and pedestrian facilities to full use by either permanent or temporary restoration before the suspension period will become effective.

3. Prior to suspension the City’s Project Manager will advise the Contractor of the level of maintenance that shall be required during suspension. The Contractor shall be responsible for snow removal and any material spreading that may be needed to provide safe access to the residences or businesses within the limits of the project. The Contractor shall notify the City’s Project Manager regarding the manpower, equipment and material necessary to attain that level of maintenance. Payment shall be made for this work as Extra Work.

4. The City’s Project Manager shall state to the Contractor, in writing, the effective suspension date and the date on which the suspension expires and the new adjusted completion date. Calendar Days included in the period that Work is actually suspended shall be counted from the effective suspension date, and the governing completion date shall be adjusted accordingly. In no case shall a granted suspension of Work be cause for requesting or granting additional Calendar Days for completion of this Contract.
VII. PROSECUTION AND PROGRESS OF WORK (Continued)

F. EXTENSION OF TIME

The time for completion of the Work may be extended upon written request from the Contractor to the City’s Project Manager, provided the request is based on delays or suspensions that are no fault of the Contractor; and such delays shall include, but not be limited to, acts or neglects of the City or others performing additional Work, site conditions not under the control of the Contractor, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God. The length of such extension, if approval is recommended by the City’s Project Manager, shall be the equivalent number of Working days, if the Contract time is expressed in Working days, or the equivalent number of Calendar Days, if the Contract time is expressed in Calendar Days or is expressed as a specific completion date, during which the Work was suspended, or in proportion to the amount of Extra Work compared to the amount of the original Contract. Requests for extensions in completion dates shall be made within 20 business days of occurrence.

Certain delays will not be justified for extension of time. Such delays, shall include, but not limited to:

1. Delays caused by a Subcontractor.
2. Inadequate construction force.
3. Failure to place orders for equipment or materials in a timely manner.
4. Normal periods of adverse weather.
5. Subsurface or otherwise concealed subsurface conditions which are not unusual.
VII. PROSECUTION AND PROGRESS OF WORK (Continued)

G. LIQUIDATED DAMAGES

If the Contractor fails to complete the Work in a timely manner, according to the Contract (allowing for any approved extensions of time), the Contractor shall pay Liquidated Damages for each day that the Work remains incomplete. The City shall deduct the amount of Liquidated Damages due from the money due the Contractor prior to final payment. If the remaining amount due the Contractor is less than the total amount of Liquidated Damages, the Contractor shall pay the difference within 10 business days. If the Contractor fails to pay such difference, the City shall have the right to recover the difference from the Contractor or his Surety.

Unless specifically amended or modified by special provision, the daily amount of the Liquidated Damages shall be as follows:

1. Contract Sum up to and including $100,000: $300/day
2. Contract Sum more than $100,000 up to and including $500,000: $500/day
3. Contract Sum more than $500,000 up to and including $1,000,000: $750/day
4. Contract Sum more than $1,000,000: $1,000/day

The Liquidated Damages provided herein are not considered punitive. The Contractor agrees that such damages are predetermined and reasonable amounts to compensate for the detriment to the public and to defray expenses incurred by the City due to the delay in the completion of the Work.

H. TERMINATION FOR CAUSE

1. The City may terminate the Contract if the Contractor:
   a. Refuses or fails to supply enough properly skilled Workers or proper materials;
   b. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
   c. Disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
   d. Otherwise commits a substantial breach of any provision of the Contract Documents.

2. When any of the above reasons exist, the City without prejudice to any other rights or remedies of the City may (after giving the Contractor and the Contractor's surety, if any, 7 business days' written notice) terminate employment of the Contractor. In addition, the City may (subject to any prior rights of the surety):
   a. Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
   b. Accept assignment of subcontracts; and
   c. Finish the Work by whatever reasonable method the City may deem expedient.
VII. PROSECUTION AND PROGRESS OF WORK (Continued)

H. TERMINATION FOR CAUSE (Continued)

3. If the Contract is terminated by the City as provided in this section, the Contractor shall not be entitled to receive any further payment until the expiration of 35 business days after Final Completion and acceptance of all Work by the City.

If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for City staff time, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to the Contractor. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, the Contractor shall pay such excess to the City.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination has been issued for the convenience of the City.

No termination or action taken by the City after termination shall prejudice any other rights or remedies of the City provided by law or by the Contract Documents upon such termination; and the City may proceed against the Contractor to recover all losses suffered by the City.

I. TERMINATION BY THE CITY FOR CONVENIENCE

1. The City may at its option, terminate this Contract in whole or in part at any time without cause by written notice thereof to the Contractor.

Upon any such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, the City shall pay the Contractor in accordance with this Paragraph. The provisions of the Contract which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to the extent provided in such provisions.

Upon receipt of any such notice of termination, the Contractor shall, unless the Notice directs otherwise, immediately:

a. Discontinue the Work to the extent specified by the City;

b. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of that portion of the Work, if any, the City has directed not to be discontinued;

c. Promptly make every reasonable effort to procure cancellation upon satisfactory terms as determined by the City of all orders and subcontracts not related to that portion of the Work, if any, the City has directed not to be discontinued;
VII. PROSECUTION AND PROGRESS OF WORK (Continued)

I. TERMINATION BY THE CITY FOR CONVENIENCE (Continued)

d. Do only such other activity as may be necessary to preserve and protect Work already in progress and to protect materials and plants and equipment on the Project Site or in transit thereto.

Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and as to bona fide obligations the Contractor assumed prior to the date of termination.

Upon termination, the City shall pay the Contractor the full cost of all Work properly done by the Contractor to the date of termination not previously paid for by the City. If at the date of such termination the Contractor has properly prepared or fabricated off site any goods for subsequent incorporation in the Work, the City may direct the Contractor to deliver such goods to the Site or to such other place as the City may reasonably determine, whereupon the City shall pay to the Contractor the cost for such goods and materials.

2. Upon such termination, the City shall pay to the Contractor the sum of the following:

a. The amount of the Contract Sum allocable to the portion of the Work properly performed by the Contractor as of the date of termination, less sums previously paid to the Contractor.

b. Previously unpaid costs of any items delivered to the Project site which was fabricated for subsequent incorporation in the Work.

c. Any proven losses with respect to materials and equipment directly resulting from such termination.

d. Reasonable demobilization costs.

The above payment shall be the sole and exclusive remedy to which the Contractor is entitled in the event of termination of the Contract by the City pursuant to this provision; and the Contractor will be entitled to no other compensation or damages and expressly waives same.

J. CLAIMS & DISPUTES

The Contractor and the City shall make any Claim against the other party in writing giving a description thereof. The claimant may make a Claim only within 21 calendar days after occurrence of the event giving rise to such Claim or within 21 calendar days after the Claimant first recognizes the condition giving rise to the Claim, whichever is later.

Pending final resolution of a Claim (unless the Parties otherwise agree in writing) the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract Documents.
J. CLAIMS & DISPUTES (Continued)

When the City makes final payment and the Contractor accepts the same, the City and the Contractor thereby waive all claims except those arising from:

1. Unsettled liens, Claims, security interests or encumbrances arising out of the Contract;

2. Failure of the Work to comply with the requirements of the Contract Documents; or

3. Terms of special guarantees required by the Contract Documents.

If either party encounters or discovers (1) subsurface or otherwise concealed physical conditions which differ materially from the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherently encountered in the Work, then the observing party shall give prompt notice of the condition to the City’s Project Manager and the other party by giving a description thereof. The observing party shall give such notice promptly before conditions are disturbed and in no event later than 21 calendar days after first observance of the same.

If the Contractor wishes to make Claim for an increase in the Contract Sum, the Contractor shall provide written notice as provided herein before proceeding to execute the Work. Written notice is not necessary for emergencies endangering life or property. The Contractor may make claims for additional cost for reasons including but not limited to (1) a written opinion from the City’s Project Manager, (2) an order by the City to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the City’s Project Manager, (4) failure of payment by the City, (5) termination of the Contract by the City, (6) City's suspension or (7) other reasonable grounds.

If the Contractor wishes to make Claim for an increase in the Contract Time, the Contractor shall give written notice as provided herein. The Contractor's Claim shall include an estimate of cost and delay on the Work, if any. In the case of a continuing delay only one Claim is necessary.

If the Contractor bases a Claim for additional time on adverse weather, the Contractor shall substantiate such Claim with data substantiating that: (1) the adverse weather was abnormal for the period of time, (2) the Contractor could not have reasonably anticipated the adverse weather, and (3) the weather had an adverse effect on the scheduled construction.

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, the claimant shall give written notice of such injury or damage (whether or not insured) to the other party within 21 calendar days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If the claimant asserts additional cost or time related to such injury or damage, the claimant shall file a separate claim for each.
VII. PROSECUTION AND PROGRESS OF WORK (Continued)

K. RESOLUTION OF CLAIMS AND DISPUTES

The City’s Project Manager shall review Claims and take one or more of the following preliminary actions within 10 business days after receipt of a Claim: (1) request additional supporting data from the Claimant, (2) submit a schedule to the parties indicating when the City’s Project Manager expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The City’s Project Manager may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

If the City and the Contractor resolve the Claim, the City’s Project Manager shall prepare a Change Order or other documentation accordingly.

If the City and the Contractor do not resolve the Claim after consideration of the foregoing, either party may seek a judicial resolution of any Claim. Any Claim against the City shall comply with the provisions of Neb. Rev. Stat. § 15-840 et seq. and other applicable laws relating to claims against the City.
VIII. GUARANTEE AND PAYMENT

A. GUARANTEE

These guarantees shall not limit the City’s rights with respect to latent defects, gross mistakes, or fraud.

1. All Work

   Unless specified otherwise in the Contract Documents, the Contractor 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 Contractor might have under the Contract Documents.

2. Utility Construction

   The Contractor guarantees all utility construction, against defects in material or Workmanship for a period of 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 2 year guarantee period, structures, all backfilled trenches and all sidewalks, pavement, and driveways judged by the City’s Project Manager to have been a part of, in close proximity to, or built subsequent to the Work performed under the Contract Documents. The Contractor guarantees all traffic and non-owner supplied street lighting materials for 2 years from the date of approval and acceptance. The Contractor 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 Contractor guarantees all paving construction against defects in material or Workmanship for a period of 2 years from the date of the approval and acceptance of the Work performed under the Contract Documents. The Contractor 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. All of this Work shall be performed at the direction and to the satisfaction of the City’s Project Manager.

4. Portland Cement Concrete (PCC) Pavement

   The Contractor guarantees all paving construction against defects in materials or Workmanship for a period of 2 years from the date of the approval and acceptance of the Work performed under the Contract Documents.

   The Contractor 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 joint sealer meeting the requirement as specified in Chapter 4 of these Standard Specifications. The Contractor 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’s Project Manager.
VIII. GUARANTEE AND PAYMENT (Continued)

A. GUARANTEE (Continued)

5. Procedure

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’s Project Manager shall notify the Contractor to make the repairs required. Upon receipt of such notice, the Contractor shall proceed with such repairs and shall complete the same within a time fixed by the City’s Project Manager, all at the Contractor's cost and expense.

If the Contractor 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 Contractor or reimbursed by him to the City; and if the Contractor neglects or refuses to do so, such cost shall be paid by the Contractor's Surety on 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 Contractor to notify the City’s Project Manager in writing within 30 calendar days prior to the expiration of the guarantee period to make a final inspection of the Work. If the Contractor 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 30 days' notice must be served upon the City’s Project Manager 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’s Project Manager 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’s Project Manager shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the City’s Project Manager’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’s Project Manager’s written notification. Once corrected or completed, the Contractor may submit a request to the City’s Project Manager for another inspection to determine Substantial Completion.
VIII. GUARANTEE AND PAYMENT (Continued)

B. SUBSTANTIAL COMPLETION (Continued)

When the Work or designated portion thereof is substantially complete, the City’s Project Manager 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 signing the same. The City’s Project Manager shall submit the Certificate to the Contractor for such acceptance.

The City shall make payment for the Work as certified in the Certificate of Substantial Completion upon the Contractor's written application and the City’s Project Manager’s Certificate for payment as provided in the Contract Documents.

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 shall be deemed as having been fulfilled and met when the Work is accepted by the City by formal action of the City’s Project Manager 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’s Project Manager 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’s Project Manager 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.

D. PROGRESS PAYMENT

Providing the Work herein contracted for is being performed in accordance with the provisions of the Contract Documents, the City’s Project Manager may make an approximate estimate of the value of the Work performed during the previous month. After each estimate has been approved by the City, the City may then pay to the Contractor, in City warrants, 95% of the value of the Work completed to date. The City may, at all times, reserve and retain out of said payment all such sums as, in the judgment of the City’s Project Manager, will be adequate to insure completion of the Work. Retainage amounts may be reduced with the written request of the Contractor and agreement by the City’s Project Manager in advance of project completion. Consideration will be given to time frames of Work completion in relationship to the total Work.
VIII. GUARANTEE AND PAYMENT (Continued)

D. PROGRESS PAYMENT (Continued)

The City may include in progress payments the invoiced value of materials on hand and properly stored and to be used solely on the contracted project, so long as the unit bid price is not exceeded.

The Contractor may request semi-monthly progress payments. Such requests shall be made in writing to the City’s Project Manager.

If the City’s Project Manager certifies the project is substantially complete and provided a final payment will be delayed more than 60 calendar days because of project complexities or the determination of final costs and quantities, the City’s Project Manager may authorize payment in an amount not to exceed 99% of the value of the Work performed.

E. FINAL PAYMENT

1. Lump Sum Contracts.

The City’s Project Manager shall, as soon as practicable after the completion and final acceptance of the Work, make a final payment for the amount of Work done under the Contract Documents. Final payment shall be determined and executed by change order or by executive order.

2. Unit Price Contract.

When all the Work under the Contract Documents is completed and accepted, the City’s Project Manager shall determine the final quantities of the various items of Work performed. He shall have prepared a final estimate of the total amount due the Contractor, which estimate shall be based on the final quantities and Contract unit prices, together with the value of any extra Work. Final payment shall be determined and executed by change order or executive order.

3. All Contracts.

When the final payment has been approved by the City, the City will pay to the Contractor, all amounts accruing under the Contract Documents, less authorized adjustments to reflect properly the amount of Work done less liquidated damages and less all previous progress payments. All prior estimates shall be subject to correction in the final estimate and payment.

4. Waiver of Claims.

The making and acceptance of final payment shall constitute:

a. A waiver of all claims by the City against the Contractor other than those arising from defective Work appearing after the final inspection or from failure to comply with the requirements of the Contract documents or the terms of any special guarantees specified therein, and

b. A waiver of all claims by the Contractor against the City.
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.

The 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 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 the 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 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 90 calendar days from presentation of the City's findings to Contractor.
IX. MISCELLANEOUS (Continued)

B. CONTRACTOR GUARANTEES REGARDING SCHEDULING

The Contractor covenants and guarantees that the Contractor will not:

1. Misrepresent to the City it’s planning, scheduling and coordination of the Work;

2. Utilize schedules materially different from those given to or made available to the City or any Subcontractors for the direction, execution and coordination of the Work, or which are not feasible or realistic;

3. Prepare schedules, updates, revisions or reports which do not accurately reflect the Contractor’s actual intent or the Contractor's reasonable and actual expectations as to:
   a. The sequences of activities;
   b. The duration of activities;
   c. The responsibility for activities;
   d. Resource availability;
   e. Labor availability or efficiency;
   f. Expected geological conditions;
   g. Weather, strikes or other delays or events impacting the Work;
   h. Value associated with the activity;
   i. The percentage complete of any activity;
   j. Completion of any item of Work or activity;
   k. Project Completion;
   l. Delays, slippages or problems encountered or expected;
   m. Subcontractor requests for time extension, or delay claims of Subcontractors.

4. The Contractor’s failure to comply with the foregoing covenant and guarantee shall be a substantial and material breach of Contract which will permit the City to terminate the Contractor for default, or withhold payments under the Contract Documents, and shall entitle the City to the remedies and damages afforded for misrepresentation or fraud by these Contract Documents or applicable law.

5. Should the Contractor fail to comply with the provisions of the Contract Documents relating to scheduling and execution of the Work by the overall project schedule, the City shall have the right, at its option, to retain the services of scheduling consultants or experts (including attorneys if necessary in the opinion of the City) to prepare schedules, reports, updates and revisions of the schedule in accordance with the Contract Documents and to review and analyze same, in order to allow the City and the City’s Project Manager to evaluate the progress of the Work by the Contractor to determine: a) whether the Contractor is complying with the Contract Documents, and to direct such action of the part of the Contractor, as permitted by the Contract Documents, as required to ensure, under the City’s schedule prepared hereunder, that the Contractor will complete the Work within the Contract Time; and b) all costs and expenses and fees incurred by the City in preparing the schedule hereunder shall be charged to the Contractor’s account. If the Contractor fails to comply with the scheduling and execution of the Work requirements of the Contract Documents, the Contractor hereby agrees, in such instance, to comply with such City-prepared schedules, if any, or directions and activity sequences, and durations as the City may reasonably require, without additional cost to the City (subject only to cost adjustments for such changes in the Work as the City may direct) to ensure completion within the Contract Time.
X. INSURANCE REQUIREMENTS

A. WAIVERS OF SUBROGATION

The City and the 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 the Contractor, as appropriate, shall require of the Architect, Architect’s 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 for 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 ALL CITY CONTRACTS

To obtain the current Insurance requirements for all City 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.