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SECTION 1100 GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

1101 PURPOSE

The purpose of these specifications is to establish, where applicable, minimum acceptable standards or a range of acceptable results for construction of water, sanitary sewer, storm sewer and streets infrastructure of the City of Owasso. The Contractor shall be responsible for producing an acceptable product and exercising control of the project. The City of Owasso personnel, except as specifically provided for in these specifications, will perform inspections for the City/Authority to document that an acceptable product is being produced.

1102 ABBREVIATIONS

Whenever the following abbreviations are used in these specifications or on the plans, they are to be construed the same as the respective expressions represented:

A.A.S.H.O.	American Association of State Highway Officials
A.A.S.H.T.O.	American Association of State Highway Traffic Officials
A.I.A.	American Institute of Architects
A.S.A.	American Standards Association
A.S.C.E.	American Society of Civil Engineers
A.S.T.M.	American Society of Testing & Materials
A.W.W.A.	American Water Works Association
O.D.O.T.	Oklahoma Department of Transportation

1103 DEFINITIONS AND TERMS

Whenever in these specifications and contracts, or in any documents or instruments pertaining to construction where these specifications govern, the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

ADVERTISEMENT: The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished.

AWARD: The acceptance by the Owner of a bid.

BASE COURSE: The layer or layers of specified or selected materials of design thickness placed on a sub-base or a sub-grade to support a surface course.

BIDDER: The individual, company, partnership or corporation submitting a bid for the advertised work.

BRIDGE: - A structure, including supports, erected over a depression or obstruction as water, highway, or railway, and having a track or passageway for carrying traffic, and having an opening measured along the center of the roadway of more than 20 feet between abutments or springline of arches or extreme ends of openings for multiple boxes.

CITY: The City of Owasso, Oklahoma, a municipal corporation, acting through its duly authorized officers or agents.

CALENDAR DAY: Every day shown on the calendar.

CHANGE ORDER: A written order issued by the Engineer to the Contractor, covering changes in the plans or quantities or both, within the scope of the contract and establishing the basis of payment and time adjustments for the work affected by the change.

CHANNEL: A natural or artificial water course.

CONTRACT: The written agreement between the Owner and the Contractor setting forth the obligations of the parties hereunder, including, but not limited to the performance of the work, furnishing of materials, and the basis of payment.

The contract includes the invitation for bids, proposal, addenda, contract form and contract bonds (statutory, performance and maintenance bond), specifications, supplemental specifications, special provisions, general and detailed plans, and notice to proceed, also any change orders and agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

CONTRACT ITEM (PAY ITEM): A specifically described unit of work for which a price is provided in the contract.

CONTRACT PAYMENT BOND (STATUTORY BOND): The security furnished by the Contractor and his/her surety to guarantee payment of prescribed debts of the Contractor covered by the bond.

CONTRACT PERFORMANCE BOND: The security furnished by the Contractor and his/her surety to guarantee complete execution and performance of the work in accordance with the contract.

CONTRACT TIME: The number of work days or calendar days allowed for completion of the contract, including authorized time extensions.

In case a calendar date of completion is shown in the proposal in lieu of the number of working calendar days, the contract shall be completed by that date.

CONTRACTOR: The individual, company, partnership or corporation contracting with the City of Owasso for performance of prescribed work.

CONTROL OF ACCESS: The condition where the right of owners or occupants of abutting land or other persons to access, light, air or view in connection with a roadway is fully or partially controlled by public authority.

CULVERT: Any structure not classified as a bridge which provides an opening under the roadway.

DEPARTMENT: The Public Works Department of the City of Owasso.

DRAINAGE DITCH: A constructed open excavation or ditch constructed for the purpose of carrying off surface water.

EASEMENT: A grant of a right of use of the property of an owner for a certain purpose at the will of the grantee.

ENGINEER: The Director of Public Works or his/her duly authorized representative. For the purpose of this contract, these refer to the Owner's representative.

EQUIPMENT: All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work.

EXTRA WORK: An item of work not provided for in the contract as awarded but found essential to the satisfactory completion of the contract within its intended scope.

EXTRA WORK ORDER: A change order concerning the performance of work or furnishing of materials involving extra work. Such extra work may be performed at agreed prices or on a force account basis as provided elsewhere in these specifications.

INSPECTOR OR TECHNICIAN: The Engineer's authorized representative assigned to make detailed inspections of contract performance.

INVITATION FOR BIDS: The advertisement for proposals for all work or materials on which bids are required. Such advertisement will indicate the time and place of the opening of proposals.

LABORATORY: The official testing laboratory of the City or any other testing laboratory which may be designated by the Engineer.

MATERIALS: Any substances specified for use in the construction of the project and its appurtenances.

MAYOR: The Mayor of the City of Owasso as constituted by charter to administer the affairs of the City of Owasso.

NOTICE TO PROCEED: Written notice to the Contractor to proceed with the contract work.

OWNER: City of Owasso, Owasso Public Works Authority, Owasso Public Golf Authority, or other entity of the City.

PARKING: That portion of the right-of-way on City streets or urban projects not designated as a traffic way or sidewalk.

PAVEMENT STRUCTURE: The combined sub-base, base and surface courses placed on the sub-grade to support the traffic load and distribute it to the roadbed.

PLANS: The approved plans, profiles, typical cross sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, and details of the work to be done.

PROJECT: The specific section of construction to be performed thereon under the contract.

PROPOSAL: The written offer of the bidder, submitted on the prescribed proposal form, to perform the work described in the plans and specifications and to furnish the labor and materials at the prices quoted by the bidder.

PROPOSAL GUARANTY: The security to be furnished by the bidder as a guaranty of good faith to enter into a contract and to execute the required bonds covering the work contemplated if his/her proposal is accepted.

SHOULDER: The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

SPECIAL PROVISIONS: Additions and revisions to the standard and supplemental specifications covering conditions peculiar to an individual project.

SPECIFICATIONS: A general term applied to all directions, provisions and requirements pertaining to performance of the work.

SPECIFIED COMPLETION DATE: The date on which the contract work is specified to be completed.

STATUTORY BOND: The approved forms of security furnished by the Contractor and his/her surety as a guaranty that (s)he will pay in full all prescribed debts of the Contractor covered by the bond.

SUBBASE: The layer or layers of specified or selected material of designed thickness placed on a subgrade to support a base course.

SUBCONTRACTOR: An individual, company, partnership or corporation to whom the Contractor bids out part of his/her main contract.

SUBGRADE: The top surface of a roadbed upon which the pavement structure and shoulders are constructed.

SUBSTANTIAL COMPLETION: The time at which the work (or specified part thereof) has progressed to the point where, in the opinion of the Engineer, the work (or a specified part thereof) is sufficiently complete, in accordance with the contract documents, so that the work (or specified part thereof) can be utilized for the purpose for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the work refer to substantial completion thereof.

SUBSTRUCTURE: All of that part of the structure below the bearings of simple and continuous spans, skewbacks or arches and tops of footings of rigid frames, together with the backwalls, wingwalls and wing protection railings.

SUPERINTENDENT: The designated representative of the Contractor present on the work at all times during progress, authorized to receive and execute instructions from the Engineer and capable of superintending the work effectively.

SUPERSTRUCTURE: The entire structure except the substructure.

WORK: Work shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project and the carrying out of all the duties and obligations imposed by the contract.

WORKING DAY: A working day shall be any day, other than a holiday, Saturday, or Sunday, on which weather and working conditions would permit the normal forces of the Contractor to proceed with regular work for a period of at least six hours toward the completion of the work, unless work is suspended for causes beyond the Contractor's control. Saturdays, Sundays, and holidays on which the Contractor's forces engage in regular work, requiring the presence of an inspector, will be considered as working days.

WORK ORDER: A written order, signed by the Engineer, of a contractual status requiring performance by the Contractor without negotiation of any sort.

WORKING TIME: The working time stated in the proposal and the contract shall be definite number of working days or calendar days and shall be considered an essential part of the contract.

In order to avoid cumbersome and confusing repetition of expressions in these specifications, it is provided that whenever anything is, or is to be, done, if, as, or, when or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient rejected, or condemned," it shall be understood as if the expression were followed by the words "by the Engineer" or "to the Engineer."

1104 BIDDING REQUIREMENTS AND CONDITIONS

1104.1 Notice to Bidders (Advertisement)

After the date is set for the receipt of proposals, the Owner will give notice of such letting to prospective bidders. The notice will contain a description of the proposed work, together with information to the bidder regarding access to proposal forms, plans, specifications, the amount of proposal guaranty and the minimum wage rate required per hour for labor (when applicable). This Notice to Bidders will be published as an advertisement giving notice of request for bids, as required by State laws. The Notice to Bidders will become one of the contract documents, if award is made.

1104.2 Prequalification of Bidders

- A. Prequalification shall be a prerequisite for bidding unless formally waived by the Owner. No bid will be received and filed by the City Clerk of the City of Owasso unless the person submitting the bid has been pre-qualified as provided by ordinance, and is the holder of a current certificate of pre-qualification in full force and effect on the date such bid is to be submitted and filed.
- B. Each bidder agrees to comply with all terms of relating to equal employment opportunity.

1104.3 Contents of Proposal Forms

The Owner will furnish prequalified bidders upon request with proposal forms which will state the location and description of the contemplated construction and will show the approximate quantities of the various items of work to be performed and materials to be furnished with a schedule of items for which unit bid or lump sum prices are asked. The proposal form will state the time in which it must be completed and the amount of the "Proposal Guaranty" which must accompany the proposal.

1104.4 Issuance of Proposals

The Owner reserves the right to disqualify or refuse to issue a proposal if a bidder is in default for any of the following reasons:

- A. Lack of competency and adequate machinery, plant and other equipment, as revealed by the financial statement and experience questionnaires.
- B. Uncompleted work which, in the judgment of the Owner, might hinder or prevent the prompt completion of additional work if awarded.
- C. Failure to pay, or satisfactorily settle, all bills due for labor and materials of former contracts in force at the time of issuance of proposals.
- D. Failure to comply with any qualification regulations of the Owner.
- E. Default under previous contracts.
- F. Contractors on unacceptable lists published by governmental agencies.

1104.5 Interpretation of Estimates

The Engineer's estimate of quantities of work to be done and materials to be furnished listed in the proposal form are to be considered as approximate only and are to be used as a basis for the comparison of bids and the award of the contract. The Owner does not expressly or by implication agree that the actual quantities involved will correspond exactly therewith; nor shall the bidder plead misunderstanding or deception because of such estimate of quantities, or of the character, location or other conditions, pertaining to the work. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications and it is understood that the quantities of work to be done and the materials to be furnished may each be increased, diminished or omitted as hereinafter provided without in any way invalidating the bid prices.

1104.6 Examination of Plans, Specifications, Special Provisions, Site of Work

The bidder is required to examine carefully the site of the proposed work and the proposal, plans, specifications, special provisions, and contract forms, and satisfy himself/herself as to the character, quality and quantities of work to be performed and materials to be furnished and as to the requirements of these specifications, supplemental specifications, special provisions and

1104.8 Rejection of Proposals

Proposals containing any omission, alterations of form, additions or conditions not called for, conditional or alternate bids unless called for, or if they contain a clause in which the bidder reserves proposals otherwise regular which are not accompanied by a Proposal Guaranty will be considered irregular and may be rejected. The Owner reserves the right to waive technicalities as to change, alterations, or reservations and make the award in the best interest of the Owner.

1104.9 Proposal Guaranty

Each separate proposal shall be accompanied by a certified check, cashier's check or bidder's surety bond, in the amount as stated in the advertisement for bids.

1104.10 Withdrawal of Proposals

Permission will not be granted to withdraw or modify a bid after it has been filed. Request for non-consideration of bids must be made in writing, addressed to the Owner, and filed with the City Clerk before the expiration of the time limit for opening bids. After other bids are opened and read, the bid for which withdrawal is requested will be returned unopened.

1104.11 Public Opening of Proposals

Proposals will be publicly opened and read on the date and at the hour and place set in the notice to bidders.

1104.12 Disqualification of Bidders

Any one or more of the following causes may be considered as sufficient for the disqualification of a bidder and the rejection of his/her bid:

- A. More than one proposal for the same work from an individual, company, partnership, or corporation under the same or different names.
- B. Evidence of collusion among bidders. Participants in such collusion will receive no recognition as bidders for any future work for the Owner.
- C. Unbalanced proposals in which the prices for some items are out of proportion to the prices of other items.
- D. Failure to submit a unit price or lump sum for each item or items of work listed in the proposal.
- E. Lack of responsibility as shown by past work for the Owner, judged from the standpoint of workmanship and progress.
- F. Uncompleted work which, in the judgment of the Owner, might hinder or prevent the prompt completion of additional work if awarded.
- G. For being in arrears on existing contracts, in litigation with the Owner, or having defaulted on a previous contract or failure to comply with any qualification regulations of the Owner.

1104.13 Material Guaranty

The successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of any or all materials to be used in the construction of the work together with samples, which samples may be subjected to tests to determine their quality and fitness for the work.

1104.14 Contractor and His/Her Employees

- A. The general Contractor and subcontractors employed upon the work shall and will be required to conform to the labor laws of the State of Oklahoma and the various acts amendatory and supplementary thereto, and to all laws, ordinances, and legal requirements applicable thereto. The Contractor shall employ competent foremen, experienced mechanics, and others skilled in the several parts of the work given them to do, for performance of the work embraced in this contract; and shall promptly discharge any and all incompetent or otherwise unsatisfactory employees. Contractor's employees directly employed in performance of the work shall not be paid less than the prevailing minimum wage scale.
- B. Necessary sanitary conveniences for the use of employees on the work, properly secluded from public observation, shall be provided and maintained by the Contractor. The construction and location of the facility and disposal of the contents shall comply with all laws of the Owner and state, relating to health and sanitation regulations.
- C. The Contractor hereby agrees to comply with the provisions of Title 40 Oklahoma Statutes (Supp.9181) Sections 196.1 et.seq. Relating to minimum wage scale of Public Works.
- D. The Contractor and each Subcontractor shall pay the contributions required by the Social Security Act, U.S. Current Tax Payment Act (withholding tax) and the public laws of the state and shall accept exclusive liability for said contributions. The Contractor further shall indemnify and hold harmless the Owner on account of any such contributions assessed against the Owner.
- E. The Contractor agrees to keep an accurate record showing the names and occupation of all employees, including the employees of any subcontractor, employed on the contract and also showing the actual wages paid to each of the employees, which record shall be open at all reasonable hours to the inspection of the Owner or the Commissioner of Labor, State of Oklahoma.
- F. The Contractor further agrees that it (and Contractor's subcontractors, if any) will not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to this compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age or national origin, and further agrees that it will not (nor will its subcontractors, if any) limit segregate or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status as an employee, because of such individual's race, color, religion, sex, age, physical handicap or national origin. Contractor further agrees with the Owner that this contract may be terminated by the Owner in the event there shall be a

violation of any of the provisions of this paragraph, upon notice in writing given, and all monies to become due pursuant to any other provisions of this contract from the date of termination shall thereafter be forfeited the Contractor being entitled only to monies expended and services performed up to and including the date of termination.

1105 AWARD AND EXECUTION OF CONTRACT

1105.1 Consideration of Proposals

After the proposals are opened and read, the approximate estimate will be considered on the correct summation of items at the unit price bid or lump sum bid which ever one is applicable. The summations will then be compared and the results made public. The Owner reserves the right to reject any or all proposals, to waive technicalities and to advertise for new proposals, or proceed to do the work otherwise when the best interest of the Owner will be promoted thereby.

1105.2 Award of Contract

Award of contract will be made by the Owner, upon the recommendation of the Engineer to the lowest responsible bidder meeting the requirements of the Oklahoma "Public Competitive Bidding Act". The award of contracts involving the expenditure of federal funds is contingent on concurrence of the federal agency or any other agency whose funds are being used. The award, if made, will be within thirty (30) calendar days after the opening of proposals.

1105.3 Cancellation of Award:

The Owner reserves the right to cancel the award of any contract at any time before the execution of said contract without any liability against the Owner/City of Owasso.

1105.4 Return of Proposal Guaranties

The guaranty deposited with bids will be returned to the bidders as soon as the contract is awarded, except the guaranty of the successful bidder, which will be returned after the contract is executed and bonds approved.

1105.5 Insurance and Bonds

- A.** The successful bidder will be required to carry such compensation and public liability insurance as may be required under the laws of the State of Oklahoma, and shall execute and furnish a statutory surety bond guaranteeing that the Contractor shall pay all indebtedness incurred for materials and labor furnished in the performance of the contract in a sum equal to one hundred percent (100%) of the contract price. The successful bidder shall furnish a performance surety bond in the amount of one hundred percent (100%) of the contract guaranteeing the proper and prompt completion of the work in accordance with the provisions of the contract and the plans and specifications. The successful bidder shall also furnish a maintenance bond in the amount of one hundred percent (100%) of the contract, guaranteeing public improvement projects for one (1) year against defective workmanship and materials.
CONTRACTOR MUST USE THE BOND FORMS SUPPLIED IN THIS DOCUMENT.

- B. The Contractor (and any subcontractors) shall carry and keep in force during this contract, policies of public liability insurance, including any contractual liability assumed under this contract, in the minimum amounts set forth below, and workmen's compensation and employer's liability insurance in the amounts required by law. The Contractor shall also furnish an Owner's Protective Policy in the same amounts with the Owner as the named insured, issued by the same insurance company as the issuer of Contractor's liability coverage.

Public Liability, other than automobile:

Personal Injury, each person	\$ 125,000.00
Personal Injury, each accident	\$ 1,000,000.00
Property Damage, each person	\$ 125,000.00
Property Damage, each occurrence	\$ 125,000.00

Automobiles and Trucks; Owned, Hired and Non-owned:

Personal Injury, each person	\$ 125,000.00
Personal Injury, each accident	\$ 1,000,000.00
Property Damage, each accident	\$ 125,000.00

- C. The policy shall provide a clause stating that it cannot be canceled by the insurer without the insurer first giving the Owner ten (10) day written notice of cancellation. The Contractor shall furnish the Owner an original and duplicate certificate of insurance at the time contracts are prepared.

1105.6 Forfeiture of Proposal Guaranty

- A. The individual, partnership, company or corporation to whom a contract is awarded shall, within ten (10) days after such contract is awarded, execute and deliver to the Owner the contract required under such award, and execute and deliver all bonds required for the protection of the Owner against the claims of every person whomsoever and against the claims of all persons resulting from the acts or act, or the omissions or defaults of the Contractor, in such amounts as may be required by the Owner. Such bonds to be executed and approved prior to the execution of said contract by the Owner.
- B. Upon the failure of the bidder to execute said bonds, or any of them, and said contract within said ten (10) days after the same is awarded, (s)he will be considered to have abandoned said bid, and the Owner may re-let the same. By reason of the uncertainty of the market prices of material and labor, and it being impracticable and extremely difficult to fix the amount of damages and expenses which the Owner would be put to by reason of said bidder's failure to execute said bonds and contracts within said ten (10) days, the proposal guaranty accompanying the bid shall be the agreed amount of damages which the Owner will suffer by reason of such failure upon the part of the bidder, and shall thereupon immediately be forfeited to the Owner. The filing of a bid under these instructions will be considered as an acceptance of this provision.

1105.7 Preliminary Matters

- A. Before starting construction the Contractor shall carefully study and compare the contract documents and check and verify pertinent figures therein and all applicable field measurements.
- B. Contractor shall promptly report in writing to the Engineer any conflict, error, ambiguity, or discrepancy which the Contractor may discover and shall obtain written interpretation or clarification from the Engineer before proceeding with any work affected thereby.
- C. Within 10 days after the Notice to Proceed, the Contractor shall submit to the Engineer for its timely review:
 - 1. Preliminary progress schedule indicating the times (number of days or dates) for starting and completing the various stages of the work, including any milestones specified in the contract documents;
 - 2. Preliminary schedule of shop drawings and sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and
 - 3. Preliminary schedule of values for all the work which includes quantities and prices of items which when added together equal the contract price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payment during performance of the work. Such prices will include an appropriate amount of overhead and profit applicable to each item of work.

1105.8 Preconstruction Conference

Within 20 days from Notice to Proceed, but before any work at the site is started, a conference attended by the Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the work and to discuss the schedules referred to in Paragraph 1105.7, procedures for handling shop drawings and other submittals, processing Applications for Payment and maintaining required records.

1106 SCOPE OF WORK

1106.1 Intent of Contract

The intent of the contract is to provide for the construction and completion in every detail of the work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract. There will be a pre-construction conference at a time specified to the Contractor after Notice of Award.

1106.2 Alteration of Plans or Character of Work

- A. The Owner reserves the right to make at any time during the progress of the work, such increases or decreases in quantities and such alterations in the details of construction, including alterations in the grade or alignment of the road or structure

or both, as may be found to be necessary or desirable. Such increases or decreases and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to accept the work as altered, the same as if it had been a part of the original contract.

- B. All claims, disputes and other matters in question between Owner and Contractor arising out of, or relating to, the contract documents or the breach thereof are not subject to arbitration. The Owner will be the sole judge in all claims and disputes.

1106.3 Extra Work

The Contractor shall perform unforeseen work, for which there is no price included in the contract, whenever it is deemed necessary or desirable in order to complete fully the work as contemplated. Such work shall be performed in accordance with the specifications as directed in writing by the Engineer, and will be paid for as provided under extra or force account work.

1106.4 Maintenance of Traffic

The project, while undergoing improvements, shall be kept open to all traffic by the Contractor unless approved otherwise. Temporary traffic control devices shall be furnished and maintained by the Contractor. Methods of traffic control shall be submitted by the Contractor for approval.

1106.5 Removal and Disposal of Structures and Obstructions

All materials, structures, or obstructions found on the project which are not to remain in place or which are not to be used in the new construction shall be carefully dismantled and salvageable materials stored in accessible locations as directed by the Engineer. Unless specified on the plans or in the proposal, this work will not be paid for separately but will be included in the price bid for other items. Unless otherwise shown, materials not considered salvageable for use by the Owner or not incorporated in the work shall become the property of the Contractor, and shall be removed from the work site in a timely manner and disposed of by him/her.

1106.6 Site Maintenance

The work site shall be kept free from construction debris. At the end of each work shift, the site shall be policed for objectionable debris which could be deposited off site by wind or storm runoff. Other materials for use in the construction of the project shall be maintained in orderly storage and protected from elements which could hinder incorporation into the work.

1106.7 Control of Storm Runoff

The Contractor shall take preventive measures to minimize polluted runoff from the work site. Pollution includes, but is not limited to, silt or mud from disturbed area, construction debris, any petroleum products, or other objectionable materials. The Contractor shall correct immediately any violation of this paragraph under current state and local ordinances. Failure to comply may result in shut down of all work as directed by the Engineer.

1106.8 Final Clean Up

Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the right-of-way all machinery, equipment, surplus and discarded

materials, rubbish, temporary structures and stumps or portions of trees. (S)He shall cut all brush and weeds within the limits of the right-of-way and shall leave the project and borrow pits in a neat condition. Material, cleared from the right-of-way will not be considered as having been disposed of satisfactorily. The Contractor shall leave any areas or slopes, where (s)he performs any work, in a neat and workmanlike condition. (S)He shall repair at his/her own expense and to the satisfaction of the Engineer, any areas, slopes, or turfing that have been damaged by his/her operations.

1107 CONTROL OF WORK

1107.1 Authority of the Contractor

The Contractor shall supervise, inspect, and direct the work competently as efficiently devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the contract documents. Contractor shall be responsible to see that the completed work complies accurately with the contract documents.

1107.2 Authority of the Engineer

- A. The Engineer's status during construction is to assist the Owner in answering questions which may be brought forth by the Contractor during construction. However, final decisions will be made by the Owner. The Engineer will decide all questions which may arise as to the quality and acceptability of materials furnished and work performed and as to the rate of progress of the work; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the Contractor. The Engineer will have the authority to suspend or change the sequence of work wholly or in part due to the failure of the Contractor to correct conditions unsafe for the workmen or the general public; for failure to carry out provisions of the contract; for failure to carry out orders; for such periods as (s)he may deem necessary due to the unsuitable weather; for conditions considered unsuitable for prosecution of the work or for any other condition or reason deemed to be in the public interest. If the Contractor ignores the authority of the Engineer under Paragraphs 1107.10 and 1107.11, the Engineer may withhold partial payments due the Contractor upon due notice in writing.
- B. Any notice to any Contractor from the Owner relative to any part of this contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said Contractor at his/her last given address, or delivered in person to said Contractor or his/her authorized representative on the work.

1107.3 Plans and Working Drawings

- A. The Owner shall furnish the Contractor with three (3) sets of plans and specifications at no cost to the Contractor. If additional sets are required, the Contractor will be required to pay the Owner for each additional set. Plans will show details of all structures, lines, grades, typical cross sections of the roadway, location and design of all structures. The Contractor shall keep one set of plans available on the work at all times. The plans will be supplemented by such working drawings as are necessary to adequately control the work. Working drawings for structures shall be furnished by

the Contractor and shall consist of such detailed plans as may be required to adequately control the work and are not included in the plans furnished by the Owner. They shall include stress sheets, shop drawings, erection plans, false-work plans, cofferdam plans, bending diagrams for reinforcing steel or any other supplementary plans or similar data required of the Contractor. All work drawings must be approved by the Engineer and such approval shall not operate to relieve the Contractor of any of his/her responsibility under the contract for the successful completion of the work. The contract price will include the cost of furnishing all working drawings.

- B. After the awarding of contract and prior to the pre-construction conference, the Contractor shall furnish four (4) copies of each submittal required, along with a list of all subcontractors, telephone numbers, addresses, etc. Exceptions will be made on an individual basis concerning submittal time frames if manufacturer needs additional time. Generally, Notice to Proceed will be issued once the City Attorney has approved the contract and all bonds, and the submittals and list of subcontractors have been submitted.

1107.4 Conformity with Plans and Specifications

- A. All work performed and all materials furnished shall be in reasonable close conformity with the lines, grades, cross sections dimensions and material requirements, including tolerances, shown on the plans or indicated in the specifications.
- B. In the event the Engineer finds the materials or the finished product in which the materials are used or the work performed are not in reasonably close conformity with the plans and specifications and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

1107.5 Coordination Of Plans, Specifications, Supplemental Specifications And Special Provisions

- A. These specifications, the supplemental specifications, the plans, special provisions, and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complimentary and to describe and provide for a complete work.
- B. The Contractor shall take no advantage of any apparent error or omission in the plans or specifications. In the event the Contractor discovers such an error or omission, (s)he shall immediately notify the Engineer. The Engineer will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the plans and specifications.

1107.6 Cooperation By Contractor

- A. The Contractor shall give the work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Engineer, his/her inspectors, and other contractors in every way possible.

- B. The Contractor shall have on the work at all times, as his/her agent, a competent superintendent capable of reading and thoroughly understanding the plans and specifications and thoroughly experienced in the type of work being performed, who shall receive instructions from the Engineer or his/her authorized representatives. The superintendent shall have full authority to execute order or directions of the Engineer without delay, and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required. Such superintendence shall be furnished irrespective of the amount of work sublet.

1107.7 Protection of Property

- A. The protection of City, state and government monuments, street signs and other City property is of prime importance, and if the same be damaged, destroyed, or removed, they shall be repaired, replaced, or paid for by the Contractor. Disturbance to this property must first be approved by the agency which controls it.
- B. At places where the Contractor's operations are adjacent to the plant of railway, telegraph, telephone, electric, gas water, sanitary sewers, or storm sewers, damage to which might result in expense, loss, or inconvenience, work shall not be commenced until all arrangements for relocation or revisions have been made.
- C. The Owner has attempted to locate all storm sewers, culverts, and buried telephone or electrical conduits, sanitary sewers, water mains, and gas mains that might interfere with the construction of this project. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner and duplication or rearrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted. The revision and crossings of the various types of lines shall be made as follows:
 - 1. Storm sewers and culverts may be removed at the time of crossing or may be adequately braced and held in position while the pipe is placed beneath them. If the storm sewer or culvert is removed, it shall be replaced with pipe of the same type and size as that removed and it shall be rejoined to the undisturbed line with a joint satisfactory to the Engineer. Backfill over and around the storm sewer shall be thoroughly compacted in order that no settlement will occur. The revision and crossing shown on the drawing shall be at the expense of the Contractor. In the event line other than those shown on the drawing are encountered and fall within the standard trench limit or within 12" of subgrade and, in the opinion of the Engineer, revision of the line is necessary for the construction of the project, the Contractor will be reimbursed for the extra cost of the crossings or revision, provided the Owner can't fix the problems themselves.
 - 2. All overhead and buried telephone and electrical conduits and gas mains to be revised or crossed by the construction of this project shall be protected in accordance with the directions of the utility company owning the conduits and/or mains. The Contractor shall notify the companies and obtain their permission before making any crossing or revisions. In the event lines other than those shown on the drawing are encountered, and in the opinion of the Engineer revision of the line is necessary for the construction of the project, the Contractor will be reimbursed for the extra cost of the crossing or revision provided the

utility can't fix the problem themselves. Any overhead cables, buried cables, conduits or gas mains shown on plans and damaged by the Contractor shall be repaired, at his/her expense, to the satisfaction of the Engineer and of the utility.

3. The Contractor shall not remove any water or sanitary sewer lines except as directed by the Engineer or as required by the drawing and specification, and shall adequately brace and protect them from any damage during construction. Any existing water main or sewer main or lateral damaged by the Contractor's operations will be repaired by the Owner's maintenance forces at the Contractor's expense. The Contractor shall notify the Owner immediately after damaging any pipe.
- D. The location of utility lines serving individual properties may or may not be shown on the drawings. All plans have been reviewed by the respective owners of the utilities and locations have been verified. If service lines are encountered which are not shown on the plans or are shown in the wrong location, the Contractor shall notify the owner of the utility and the Engineer for relocation of the lines. If the lines are broken or damaged from construction and were not shown or were shown erroneously, the Contractor shall not be liable for the cost of repairs.

1107.8 Cooperation between Contractors

- A. The Owner reserves the right at any time to contract for and perform other or additional work on or near the work covered by the contract.
- B. When separate contracts are let within the limits of any one project, each Contractor shall conduct his/her work so as to minimize interference with the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.
- C. Each Contractor involved shall assume liability, financial or otherwise, in connection with his/her contract and shall protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delay or loss experienced by him/her because of the presence and operations of other contractors working within the limits of the same project.
- D. The Contractor shall arrange his/her work and shall place and dispose of the materials being used so as to minimize interference with the operations of the other contractors within the limits of the same project. (S)He shall join his/her work with that of the others in acceptable manner and shall perform it in proper sequence to that of the others.

1107.9 Construction Stakes, Lines and Grades

- A. Unless otherwise shown on plans, the Contractor will set vertical and horizontal controls as shown on survey data sheet of construction plans. It shall be the responsibility of the Contractor to assure the accuracy of the controls prior to the commencement of work.

- B. It shall also be the responsibility of the Contractor to protect and maintain those controls and to replace immediately any or all controls should they be damaged or altered in any manner.
- C. From these vertical and horizontal controls, the Contractor shall layout and stake the project for construction in accordance to construction plans and in a manner that is satisfactory to the Engineer prior to setting forms or batterboards.
- D. From these vertical and horizontal controls, the Contractor shall (in accordance with Section 1107.1 of these General Conditions) provide competent personnel to layout the project in accordance to construction plans.
- E. Inspectors or technicians employed by the Owner will be authorized to inspect all work done and materials furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The inspector will not be authorized to alter or waive the provisions of the contract.

1107.10 Inspection of Work

- A. All materials and each part or detail of the work shall be subject to inspection by the Engineer. The Engineer shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.
- B. If the Engineer requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work, but should the work so exposed or examined prove unacceptable, the uncovering or removing, and the replacing of covering or making good of the parts removed, will be at the Contractor's expense.
- C. Any work done or materials used without inspection by the Owner's representative may be ordered removed and replaced at the Contractor's expense. The Engineer must be notified within forty-eight (48) hours before placement of any concrete, asphalt, or pipe and an inspector must be present during these operations. The inspector will not be authorized to issue instructions contrary to the plans and specifications, or to act as foreman for the Contractor.

1107.11 Removal of Unacceptable and Unauthorized Work

- A. All work which does not conform to the requirements of the contract will be considered as unacceptable.
- B. Unacceptable work, whether the results of poor workmanship, use of defective materials, damage through carelessness, or any other cause, shall be removed immediately and replaced in an acceptable manner.

- C. Work done contrary to the instructions of the Engineer, work done beyond the line shown on the plans, or any extra work done without authority, will be considered as unauthorized and will not be paid for under the provisions of the contract. Work so done may be ordered removed or replaced at the Contractor's expense.
- D. Upon failure on the part of the Contractor to comply with any order of the Engineer made under the provisions of this article, the Engineer will have the authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from any monies due or to become due to the Contractor.

1107.12 Load Restrictions

- A. The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the project. A special permit will not relieve the Contractor of liability for damage which may result from the moving of equipment.
- B. The operation of equipment of such weight or so loaded as to cause damage to structures or the roadway or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by his/her hauling equipment.

1107.13 Maintenance during Construction

- A. The Contractor shall maintain the work during construction and until the project is accepted. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces to the end that the construction will be kept in satisfactory condition at all times.
- B. All cost of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various pay items and the Contractor will not be paid an additional amount for such work.

1107.14 Failure to Maintain Construction

If the Contractor, at any time, fails to comply with the provisions of maintenance, the Engineer will immediately notify the Contractor of such non-compliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Engineer may immediately proceed to maintain the project, and the entire cost of this maintenance will be deducted from monies due or to become due the Contractor on this contract.

1107.15 Final Inspection

- A. Upon due notice from the Contractor of presumptive completion of the entire project, the Engineer will make an inspection with the Contractor. If all construction provided for and contemplated by the contract is found completed to his/her satisfaction, that inspection shall constitute the final inspection.

- B. If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Engineer will give the Contractor the necessary instructions for correction of same, and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection provided the work has been satisfactorily completed.

1108 CONTROL OF MATERIAL

1108.1 Source of Supply and Quality Requirements

The materials used on the work shall meet all quality requirements of the contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the Engineer of his/her proposed sources of materials prior to delivery. At the option of the Engineer, materials may be approved at the source of supply before delivery is started. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources.

1108.2 Samples, Tests, Cited Specifications

- A. All materials will be inspected, tested and accepted by the Engineer before incorporation in the work. Any work in which untested and unaccepted materials are used without approval or written permission of the Engineer shall be performed at the Contractor's risk and may be considered as unacceptable and unauthorized.
- B. All materials required to be tested by a private laboratory shall be approved by the Engineer. Reports of such tests shall be forwarded to the Engineer.

1108.3 Plant Inspection

The Engineer may undertake the inspection of materials at the source. In the event plant inspection is undertaken, the following conditions shall be met:

- A. The Engineer shall have the cooperation and assistance of the Contractor and the producer with whom (s)he has contracted for materials.
- B. The Engineer shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
- C. If required by the Engineer, the Contractor shall arrange for an approved building for the use of the inspector, such building to be located conveniently near the plant, independent of any building used by the material producer.
- D. Adequate safety measures shall be provided and maintained.
- E. It is understood that the Owner reserves the right to retest all materials prior to incorporation into the work which have been tested and accepted at the source of supply after the same have been developed and to reject all materials which, when retested, do not meet the requirements of these specifications.

1108.4 Unacceptable Materials

All materials not conforming to the requirements of the specification shall be considered as unacceptable and all such materials will be rejected and shall be removed immediately from the site of the work unless otherwise instructed by the Engineer. No rejected material, the defects of which have not been corrected, shall be used until approval has been given.

1109 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

1109.1 Laws to be Observed

The Contractor shall keep fully informed of all federal and state laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner may affect those engaged or employed on the work, or which in any way affect the conduct of the work. (S)He shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the Owner and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulations, order, or decree, whether by himself/herself or his/her employees.

1109.2 Patented Devices, Materials and Processes

If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, (s)he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Owner, any affected third party 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, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the work.

1109.3 Public Convenience and Safety

- A. The Contractor shall comply with all applicable federal, state, and local laws governing safety, health and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his/her own responsibility or as the Engineer may determine, reasonably necessary to protect property in connection with the performance of the work covered by the contract.
- B. Materials stored upon the roadway shall be so placed and the work shall, at all times, be so conducted as to cause no greater obstruction to the traveling public than is considered necessary by the Engineer.

1109.4 Use of Explosives

- A. When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life or property, including new work. The Contractor shall be responsible for all damage resulting from the use of explosives.
- B. In handling explosives used during the construction of the project, the Contractor shall adhere to all federal and state laws and City ordinances regulating the purchase,

transportation, storage, handling and use of such explosives. No blasting shall be done without the approval of the Engineer.

1109.5 Contractor's Responsibility for Work

The performance of the contract and the work, as well as the full dollar amount of the contract, is at the risk of the Contractor. The Contractor shall take all responsibility of the work, and shall bear all losses from any cause whatsoever, including, but not limited to, losses resulting because of the amount or character of the work, or because the nature of the land in or on which the work is done is different from what is assumed or expected, or on account of the weather, floods, fire, windstorm, or other actions of the elements, or any cause or causes whatsoever for which the Owner is not responsible.

If the work or any part or parts thereof is destroyed or damaged from any of the aforesaid causes prior to Owner's final acceptance of same, the Contractor, at Contractor's expense, shall restore the same or remedy the damage.

1110 PROSECUTION AND PROGRESS

1110.1 Assignment and Subletting of Contract:

- A. The Contractor shall give his/her personal attention to the fulfillment of this contract, and shall not let, assign, or transfer it or his/her right, title, or interest in or to the same or any part thereof, by attorney or otherwise, or sublet any part of the work to any other person without the previous consent of the Owner in writing.
- B. Should any subcontractor fail to perform in a satisfactory manner the work undertaken by him/her, his/her subcontract shall be immediately terminated by the Contractor upon notice from the Owner. The Contractor shall be as fully responsible to the Owner for the acts and omissions of persons directly employed by them, as (s)he is for the acts and omissions of persons directly employed by him/her. Nothing contained in these contract documents shall create any contractual relationship between any subcontractor and the Owner.

1110.2 Time and Progress

- A. The work shall be commenced on or after the date of the Notice to Proceed from the Owner. The Contractor agrees that the work shall be prosecuted regularly, diligently, and uninterruptedly at a uniform rate of progress so as to insure completion within the number of days stated in the bid proposal. It is expressly understood and agreed that the said time for the completion of the work described herein is a reasonable time for the completion of the same.
- B. The Contractor is required to furnish the Engineer with progress schedules, in a format approved by the Engineer, setting forth in detail the procedure (s)he proposes to follow, and giving the dates on which (s)he expects to start and to complete separate portions of the work. If at any time, in the opinion of the Engineer, proper progress is not being maintained, such changes shall be made in the schedule of operations which will satisfy the Engineer that the work will be completed within the period stated in the proposal.

- C. Except as otherwise required for the safety or protection of persons of the work or property at the site or adjacent thereto, and except as otherwise stated in the contract documents, all Work shall be performed during regular working hours, and the Contractor will not permit overtime work or the performance of work on Saturday, Sunday, or any holiday observed by the City of Owasso without the Owner's written consent (which will not be unreasonably withheld) given after prior written notice to the Engineer. **The Contractor is to compensate the Owner for any charges incurred by the Owner for the inspection of the work outside regular business hours.**
- D. If the Contractor shall fail to complete the work within the specified, then the Contractor agrees to pay to the Owner, not as penalty, but as liquidated damages for such breach of contract, the sum specified in the Agreement, for each day of failure to complete the work after the specified time set forth in the bid proposal. The said amount is fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damage the Owner would in such event sustain.
- E. It is further agreed that time is of the essence of each and every portion of this contract and the specifications wherein a definite and certain time is fixed for the performance of any act whatsoever; and where under the contract an allowance of additional time for the completion of any work is made, the new time fixed by such extension shall be of the essence of this contract.
- F. Should the Contractor be delayed in the final completion of the work by any act or neglect of the Owner or Engineer, or of any employees of either, or by strikes, injunctions, fire, or other cause or causes outside of and beyond the control of the Contractor and which, in the opinion of the Engineer, could have been neither anticipated nor avoided, then an extension of time sufficient to compensate for the delay, as determined by the Engineer, shall be granted by the Owner, provided, however, that the Contractor shall give the Owner and the Engineer notice in writing of the cause of the delay in each case within ten (10) days after the delay.
- G. Time extensions may be granted for unusually inclement weather occurring more often than anticipated at the project location during any given month. Anticipated weather delays (days) included in the contract period at time of award are based on the following:

Monthly Anticipated Adverse Weather Delay
Work Days Based on Five (5) Day Work Week

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
10	6	8	6	6	4	3	3	6	5	3	6

- H. The Contractor's progress schedule must include these anticipated adverse weather delays in all weather-dependent activities. Time extensions to the contract period will be granted only under the following conditions.
 - 1. The delay has been documented with Owner in a timely manner and Owner agrees that the delay actually occurred, and

2. The delay affects work in progress and actually causes a delay in project performance.
 - I. Extensions of time will not be granted for delays caused by inadequate or insufficient construction force or the failure of the Contractor to place orders for equipment or materials a sufficient time in advance to insure delivery when needed. Any extension of time by the Owner shall not release the Contractor and surety herein from the payment of liquidated damages for a period of time not included in the original contract or the time extension as herein provided.
 - J. Failure to complete project within specified time, as set forth in this contract, may be grounds for disqualification for future consideration for contracts with the Owner.

1110.3 Character of Workers, Methods and Equipment

- A. The Contractor shall at all time employ sufficient labor and equipment for prosecuting the several classes of work to full completion in the manner and time required by these specifications.
- B. All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experiences in such work and in the operation of the equipment required to perform all work properly and satisfactorily.
- C. Any person employed by the Contractor or by any subcontractor who does not perform his/her work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without the approval of the Engineer.
- D. Should the Contractor fail to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may suspend the work by written notice until such orders are complied with.

1110.4 Limitation of Operations

The Contractor shall conduct the work at all times in such a manner and sequence to the satisfaction of the Engineer. (S)He shall not open up work to the prejudice or detriment of work already started. The Engineer may require the Contractor to finish a section on which work is in progress before work is started on any additional sections if the opening of such section is in the public interest or welfare.

1110.5 Contractor's Right of Protest

If the Contractor considers any work demanded of him/her to be outside the requirements of the contract, or considers any record or ruling of the Engineer to be unfair, (s)he shall, immediately upon such work being demanded or such record or ruling being made, ask for written instructions or decisions, whereupon (s)he shall proceed without delay to perform the work or to conform to the record or ruling. Within ten (10) days after the date of receipt of written instructions or decisions, (s)he shall file a written protest with the Engineer, stating clearly and in detail the basis

of his/her objections. Except for such protest and objections as are made of record in the manner herein specified and within the time stated, the records, rulings, instructions, or decision of the Engineer shall be final and conclusive.

1110.6 Right of Owner to Terminate Contract

If the work to be done under this contract shall be abandoned by the Contractor, or if this contract shall be assigned by him/her otherwise than as herein provided, or if the Contractor should be adjudged as bankrupt, or if a general assignment of his/her assets be made for the benefit of his/her creditors, or a receiver should be appointed for the Contractor or any of his/her property; or if at any time the Engineer shall certify in writing that the performance of the work under this contract is being unnecessarily delayed, or that the Contractor is willfully violating any of the conditions or covenants of this contract or the specifications therefore, or that (s)he is executing the same in bad faith or otherwise not in accordance with the terms of this contract; or if the work be not substantially completed within the time named for its completion, or within the time to which such completion date may be extended then the Owner may serve written notice upon the Contractor and his/her surety of said Owner's intention to terminate this contract, and unless within five (5) days after the serving of such notice upon the Contractor a satisfactory arrangement is made for the continuance thereof, this contract shall cease and terminate. In the event of such termination, the Owner shall immediately serve notice thereof upon the surety and Contractor, and the surety shall have the right to take over and complete the work, provided, however, that if the surety does not commence performance thereof within thirty (30) days from the date of said notice of termination, the Owner may take over the work and prosecute same to completion, by contract, or otherwise for the account and at the expense of the Contractor; and the Contractor and his/her surety shall be liable to the Owner for any and all cost sustained by the Owner by reason of such prosecution and completion. In such event the Owner may take possession of, and utilize in completing the work, all such materials, equipment, tools and plant as may be on the site of the work and necessary therefore.

1110.7 Final Acceptance

It shall be the duty of the Engineer to determine when the work is completed and the contract fulfilled, and to recommend its acceptance by the Owner. The work therein specified to be performed shall not be considered finally accepted until all the work has been accepted by the City of Owasso or the Owasso Public Works Authority.

1111 MEASUREMENT AND PAYMENT

1111.1 Payment for Contractor's Plant and Miscellaneous Items

For providing plant, tools, and equipment; for furnishing, erecting, maintaining and removing the construction plant, construction roads, camps, sanitary convenience, temporary water supply, dewatering and other temporary works; for furnishing insurance, bonds, drawings, records, payment of fees, defense of suits, and any all incidental requirements, whether or not they are enumerated in this paragraph, the Contractor shall receive no direct payment. Compensation for them shall be considered as having been included in the prices stipulated for the bid items, the payment for which, calculated in the manner specified, shall constitute the total compensation due Contractor for the performance of this contract.

1111.2 Method of Measurement and Basis of Payment for Items of Work

The Contractor shall be paid for all work performed under the contract based on the Engineer's computations of as-built quantities and the Contractor's unit price or lump sum per bid item. This payment shall be full compensation for furnishing all supplies, materials, tools, equipment, transportation, and labor required to do the work; for all loss or damage, because of the nature of the work, from the action of the elements or from any unforeseen obstruction or difficulty which may be encountered in the prosecution of the work, and for which payment is not specifically provided; for all expenses incurred by or because of any suspension or discontinuance of all or any part of the work; and for well and faithfully completing the work according to the contract documents and the requirements of the Engineer.

1111.3 Payments

- A. If the work is progressing in a satisfactory manner, the Contractor shall prepare an estimate for partial payment per deadlines stated in the contract, provided said payment is not less than \$1,000.00. An estimate for partial payment shall include items actually incorporated in the work. The Owner will retain ten percent (10%) of the amount due until substantial completion of all work at which time the retainage may be reduced to five percent (5%). All retainage shall be returned upon the final completion and acceptance of all work included in this contract. Partial payment does not constitute acceptance of that portion of the work.
- B. Owner has complete responsibility for payment review and approval during construction. The Contractor's application for progress payments will be made on the form presented in the Agreement. Applications shall be submitted in accordance with the payment schedule presented in the Agreement.
- C. When the work has been completed, the Engineer shall carefully measure and determine the as-built quantities of each class of work as shown in the schedule of bid items and such extra work performed by order of the Engineer. The aggregate cost of the work done and the materials furnished shall constitute the amount due for the completed work. All prior estimates and payments shall be subject to correction in the final estimate and payment.

1111.4 Extra Work

- A. When and as ordered in writing by the Engineer, the Contractor shall do any work or furnish any materials which cannot reasonably be classified under any of the items of the contract but which may be found necessary in order to carry out and complete more fully the work herein agreed to be done and performed; and the Contractor hereby agrees to accept, as full compensation for such extra work, lump sums or unit prices agreed upon in writing before said work is commenced.
- B. Whenever, in the judgment of the Engineer, it is impracticable because of the nature of the work or for any other reason to agree upon lump sums or unit prices, the extra work and materials shall be paid for at actual necessary cost as determined by the Engineer, plus fifteen percent (15%), which fifteen percent (15%) is hereby understood and agreed to include all cost of general superintendence, general expense, overhead, and profit. The actual necessary cost will include expenditures for material, labor, foremen, insurance, bond premiums, social security, and supplies

furnished by the Contractor, and a rental allowance for equipment, where required, to be agreed upon in writing before the work is begun, but will, in no case, include any allowance for office expense, general superintendence or other general expense.

- C. The Contractor shall, on or before the tenth day of the month succeeding that in which any extra work shall have been performed, file with the Engineer an account giving the itemized cost of such extra work, and shall give the Engineer access to all accounts, bills, and vouchers relating thereto. In case the Contractor fails to file, within the time above mentioned, such accounts for extra work, (s)he will be deemed to have performed such extra work without charge and shall be entitled to no compensation therefore.
- D. The Contractor shall file with the Engineer, certified lists in duplicate, of any equipment and the schedule of pay rates for common and semi-skilled labor and operators of various classes which are intended to be used in performing the work covered by this contract. These rates shall be subject to approval of the Engineer for computation of extra work as mentioned above, however, if the Contractor fails to file these lists with the Engineer prior to starting any work covered by contract, then the Engineer's computations shall be based on average wages and rates paid on City work.

1111.5 Payment or Acceptance Not A Waiver by Owner

Neither acceptance by the Owner or the Engineer, or any employee of either, nor any order by the Owner for payment of money, or the payment thereof, nor any taking of possession by Owner, nor the granting of any extension of time, shall operate as a waiver of any rights or powers of Owner hereunder, and in the event that after the work hereunder has been accepted and final payment made, it should be discovered that any part of this contract has not been fully performed or has been done in a faulty or improper manner, the Contractor shall immediately remedy such defect, or in the event of neglect to do so within a reasonable time after notice thereof, shall be liable for the damage caused thereby, as Owner may elect. The acceptance of the work or final payment therefore shall be no bar to suit against the Contractor or surety, or both.

1111.6 Contractor's Obligation after Acceptance

Contractor further agrees without cost other than is specially provided for in this contract, at any and all times during the guaranty period following the completion and final acceptance of the work embraced in this contract, without notice from Owner, to refill all trenches or ditches that may sink or settle; and to repair all breaks or failures that may occur in the construction work due to defective material or workmanship; and to indemnify, save harmless and defend Owner from any and all suits and actions of every description brought against the Owner for, or on account of injuries or damages alleged to have been received or sustained by any party or parties by reason of, or arising out of the failure of Contractor to refill all trenches or ditches; and to repair all breaks or failures of said construction work, which said injuries or damages are alleged to have been received during the guaranty period from the final acceptance of the work hereunder; and to pay any and all judgments that might be rendered against the Owner in any suits and actions, together with such expenses or attorney's fees expended or incurred by the Owner in the defense thereof.

END OF SECTION

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