

## GENERAL REQUIREMENTS AND COVENANTS

### Section 102

#### Instructions to Bidders - Proposal Requirements

##### BIDDER'S RESPONSIBILITY

The work shall be let in accordance with, but not limited to, the following sections of the Wisconsin State Statutes.

1. Section 62.15 regarding public works construction
2. Section 779.14 regarding liens on contractors
3. Section 66.0903 regarding municipal wage scale
4. Section 66.0901(2) regarding proof of responsibility

##### NOTICE TO CONTRACTORS

“The Advertisement for Bids” constitutes an official notice to contractors stating the time and place for the submission of seal proposals upon designated projects for proposed work, instructions to bidder regarding proposal forms, proposal guaranty, plan specifications, and the reservation of the right of the Owner to reject any or all bids.

##### PREQUALIFICATION OF BIDDERS

In accordance with Wisconsin Statutes 66.09(2) and (3), all bidders must submit prequalification to the Director of Public Works not less than five (5) days prior to the date of opening bids. Said proof of responsibility shall not be valid if filed prior to one year of the date of opening of bids or if not reflective of bidders current status.

The decision of the Director of Public Works with regard to the sufficiency of the data contained in the form is final and may cause the rejecting or disregarding of said bid.

##### DISQUALIFICATION OF BIDDERS

Any one or more of the following causes may be considered as sufficient for rejection of the bid or bids and disqualification of the bidder from further bidding for such periods of time as shall be determined by the Director of Public Works.

1. Developments subsequent to the establishment of bidder's competence and qualifications which, in the opinion of the Director of Public Works would reasonably be construed as affecting the responsibility of bidder.
2. Conviction of a violation of a State or Federal law or regulation, or rule or regulation of a Federal Department, board or commission, relating to or reflecting on the competency of the bidder for performing construction work.
3. More than one proposal for the same work from an individual, partnership or corporation under the same or different names.
4. Evidence of collusion among bidders.
5. Non-compliance with the terms of previous or existing contracts.

6. Uncompleted work which, in the judgment of the Director of Public Works, might in any way hinder or prevent the prompt completion of additional work if awarded.
7. Uncompleted work on which the actual time used has exceeded the contract time set therefore, or on which work performance or progress is not satisfactory in the judgment of the Director of Public Works.

#### CONTENTS OF PROPOSAL FORMS

The Owner will furnish bidders with proposal forms which will state the location and description of the contemplated construction, the estimated quantities of the various items of work to be performed and materials to be furnished, for which unit bid prices are asked. The proposal form will state the time in which the work must be completed, the amount of proposal guaranty which must accompany the proposal, will contain special provisions or requirements which may vary from or are not contained in these specifications and as well as the amount of liquidated damages, if any, to be imposed upon the Contractor for failure to complete the contract in the prescribed time to reimburse the City for any expenses involved due to engineering, inspection, and inconvenience.

All papers bound with or attached to the proposal form are considered a part thereof and must not be detached or altered when the proposal is submitted. The plans, specifications and other documents designated in the proposal form will be considered a part of the proposal whether attached or not.

#### PREPARATION OF PROPOSAL

The bidder must submit his proposal on the forms furnished by the Owner. All blank spaces in the proposal forms must be correctly filled in where indicated for each and every item for which a quantity is given, and the bidder must state the prices (written in ink) for which he proposes to do each item of the work contemplated or furnish each item of the material required. In case of conflict between the unit price stated and the extension for that item, the unit price will govern.

All proposals submitted by an individual shall be signed by the bidder or by a duly authorized agent. A proposal submitted by a partnership shall be signed by a partner or by a duly authorized agent thereof. A proposal submitted by a corporation shall be signed by an authorized officer or duly authorized agent of such corporation. The required signatures shall in all cases appear in the space provided therefore on the proposal.

#### PROPOSAL GUARANTY

Each separate proposal shall be accompanied by a certified check or acceptable collateral in the amount of five percent (5%) of the total amount bid, made payable to the Owner. A bid bond in lieu of a certified check will be acceptable.

#### DELIVERY OF PROPOSAL

Each proposal submitted shall be placed in a sealed envelope plainly marked with the project name, and name and address of the bidder on the outside. When sent by mail, preferably registered, the sealed proposal, marked as indicated above, should be enclosed in an additional envelope. No proposal will be considered unless filed on or before the time and at the place designated in the advertisement or instructions to bidders.

#### WITHDRAWAL OF PROPOSALS

Any bidder, upon his or her authorized representative's written request, will be given permission to withdraw his proposal not later than the time set for opening thereof. At the time of opening of the proposals, when such

proposal is reached, it will be returned to him unread. However, no bid shall be withdrawn after opening of the bids without the consent of the Director of Public Works for a period of thirty (30) days after the scheduled time for closing bids.

### REJECTION OF PROPOSAL

Proposals containing any omission, alterations of form, additions or conditions not called for, conditional or alternate bids unless called for, incomplete bids, or proposals otherwise regular which are not accompanied by a certified check or acceptable collateral will be considered irregular and may be rejected. The Owner reserves the right to waive technicalities as to changes, alterations, or reservations, and make the award to the best interest of the Owner.

## Section 103

### AWARD AND EXECUTION OF CONTRACT

#### CONSIDERATION OF PROPOSAL

After the proposals are opened and read, the quantities will be extended and totaled in accordance with the bid prices of the accepted proposals, and the results of prices will be made public. Until the final award of the contract, the Owner reserves the right to reject any and all proposals, or proceed to do the work otherwise when the best interests of the Owner will be promoted thereby.

#### AWARD OF CONTRACT

The award of contract, if any, will be to the lowest responsible bidder whose proposal complies with all the requirements necessary to render said proposal as being acceptable. The award will be made within thirty (30) days after the opening of the proposal. The work outlined in the proposal may be awarded as a whole or in part or parts, according to the best interests of the Owner.

#### EXECUTION OF CONTRACT

The individual, firm partnership, or corporation to whom or to which the contract has been awarded, shall properly execute, on the forms provided, the contract and the 100% Performance Bond, and shall within ten (10) days after the contract is mailed, return them to the Office of the Owner.

#### APPROVAL OF CONTRACT

No contract is binding upon the Owner until it has been executed by the Owner and delivered to the Contractor.

#### FAILURE TO EXECUTE CONTRACT

Failure of the successful bidder to comply with any of the requirements of these specifications or to execute the contract within ten (10) days after mailing as specified or to furnish security as required shall be just cause for the annulment of the award. In the event of such annulment of the award, the amount of proposal guaranty shall become the property of the Owner, not as a penalty but as liquidated damages. Award may then be made to the next best qualified bidder, or the work readvertised, or handled as the Owner may elect.

#### RETURN OF THE PROPOSAL GUARANTEES

As soon as the proposal prices have been compared, the Engineer may, at his discretion, return the certified checks or other collateral accompanying those proposals, which in his judgment, would not be considered in making the award. When the award is made the successful bidder's collateral only will be retained until the contract and bond have been executed, after which it will be returned to the bidder. Should the award be

delayed more than thirty (30) days all bidders' collateral will be returned unless such delay is from causes beyond the control of the Owner.

## REQUIREMENTS OF PERFORMANCE BOND

The contract shall not become operative unless the Contractor on or before the time of signing the contract shall have furnished a surety bond or cash in an amount at least equal to one hundred percent (100%) of the contract price as surety for all the faithful performance of this contract and for the payment of all persons performing labor and furnishing materials in connection with the contract.

### Section 104

## SCOPE OF WORK

### INTENT OF PLANS AND SPECIFICATIONS

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

If the contractor does not fully understand the plans and specifications or the intent concerning any part of the work, he shall satisfy himself by making the necessary inquiries of the Engineer before bidding.

### ACCURACY OF PLANS

The plans for the project represent the best data available on all existing surface features and underground utilities. Preparation of the plans is based on actual field measurements whenever possible, such measurement pertaining both to alignment and to grade. Utility locations, which could not be field-measured, are plotted from the best map or plan sources available. Therefore, the information shown on the plans represents to the best of the Engineer's knowledge an accurate picture of the conditions to be encountered in prosecution of the work.

Should the Contractor encounter unknown underground utilities or structures in the path of his construction, the Engineer will attempt to determine what they are and whether it is necessary to abandon or maintain them. The Engineer will make a decision as to the disposition of the specific case, and if such disposition requires unreasonable effort and expense on the part of the Contractor, the Engineer will prepare a written authorization for extra work based upon the agreement as to cost with the Contract and conformance with the General Specifications pertaining to Extra Work.

### OMITTED ITEMS

The Engineer may, in writing, order omitted from the work any item other than major items found unnecessary to the project and such omission shall not be a waiver of any condition of the contract nor invalidate any of the provisions thereof. Major items may be omitted by supplemental agreements. The contractor will be paid for all work done toward the completion of the item prior to such omission as provided in payment for omitted items.

### CHANGES AND INCREASED OR DECREASED QUANTITIES OF WORK

The Engineer reserves and shall have the right to make such changes, from time to time, in the plans, the character, or quantity of the work as may be considered necessary or desirable to complete fully and acceptably

the proposed construction in a satisfactory manner, provided such alterations do not change the total cost of the project, based on the originally estimated quantities and the unit prices bid, by more than fifteen percent (15%), and provided further that such alterations do not change the total cost of any major item, based on the originally estimated quantities and the unit prices bid, by more than twenty-five (25%). A major item shall be construed to be any item, the total cost of which is equal to or greater than ten percent (10%) of the total contract price, computed on the basis of the proposal quantity and the contract unit price. Should it become necessary, for the best interest of the Owner, to make changes in excess of that herein specified, the same shall be covered by supplemental agreement.

The Contractor shall not start work on any alterations requiring a supplemental agreement until the agreement setting forth the adjusted prices shall be executed by the Owner and the Contractor.

Should any of the changes not requiring supplemental agreements be made as provided herein, the Contractor shall perform the work as altered, increased or decreased at the contract unit price or prices.

In case a satisfactory adjustment in price cannot be reached for any item requiring a supplemental agreement, the Owner reserves the right to terminate the contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the work.

#### EXTRA WORK - FORCE ACCOUNT

When work is necessary to the proper completion of the project for which no quantities or prices were given in the proposal or contract, the same shall be called extra work and shall be performed by the Contractor when so directed in writing by the Engineer. Extra work shall be performed by the Contractor in accordance with these specifications in a proper and workmanlike manner and as may be directed by the Engineer. Prices for extra work shall be itemized and covered by a supplemental agreement submitted by the Contractor and approved by the Owner prior to the actual starting of such work. Should the parties be unable to agree on unit prices for the extra work or if this method is impractical, the Engineer may instruct the Contractor to proceed with the work by day labor or force account as hereinafter provided for in payment for force account work. Claims for extra work not authorized in writing by the Engineer prior to the work being done will be rejected.

#### PAYMENT FOR EXTRA AND FORCE ACCOUNT WORK

All extra work done on a force account basis will be paid for in the manner hereinafter described, and the compensation thus provided shall be accepted by the Contractor as payment in full for the use of small tools, superintendent's services, the timekeeper's services, premium on bond, and all other overhead expenses incurred in the prosecution of all extra work done on a force account basis. Payment will be made as follows:

1. For all materials purchased by the Contractor and used in this specific work he will receive the actual cost of such materials including freight charges, as shown by original receipted bills for materials and freight, to which will be added an amount equal to fifteen (15) percent of the sum thereof.
2. For all labor and foremen engaged in the specific operation, the Contractor will receive the wage prevailing and paid on the project for each and every hour that said labor and foremen are actually engaged in such work, to which will be added an amount equal to fifteen (15) percent of the sum thereof. In addition, the Contractor shall be paid a sum equal to the Workmen's Compensation insurance premium and the actual cost of Social Security taxes, computed on the base rate for the class of work involved, for the actual amount of the payroll.
3. For any machine, power, and equipment which it may deem necessary or desirable to use, the Contractor will be allowed a reasonable rental price, which will be agreed upon in writing before such work is begun, for each and every hour that said machinery or equipment is in use on such work, to which sum no percentage will be added.

The Contractor's timekeeper and the inspector shall compare records of extra work on a force account basis at the end of each day. Copies of these records shall be made in duplicate by the inspector and shall be signed by both the inspector and the Contractor's timekeeper, one copy being forwarded respectively to the Engineer and the Contractor.

No extra work will be paid for unless unit prices or wages have been agreed upon in writing before such work is started. Bills for force account work must be certified and submitted in triplicate to the Engineer with the current monthly estimate.

#### MAINTENANCE OF TRAFFIC

The Contractor shall plan and prosecute his work, when the construction involve closing or relocation of any local street or highway, so that traffic will be hindered to a minimum.

The Contractor shall bear all of the expense of maintaining traffic across the section of street undergoing improvement, and the construction and maintaining of such approaches, crossings, intersections and other features as may be necessary without compensation.

During concrete paving operations the Contractor, at his own cost and expense and at locations designated in the contract, shall provide means satisfactory to the Engineer for crossings for the traffic on intersecting streets in a manner which will not interrupt the flow of such traffic or be harmful to the newly placed pavement.

The Contractor at his own expense shall also provide and maintain adequate temporary pedestrian crossings, barriers and lights, special warning signs or watchmen at the ends of the portions of the road closed by construction on the project and at intersecting roads or streets and at other points of public access and travel along the project.

#### REMOVAL AND DISPOSAL OF STRUCTURES AND OBSTRUCTIONS

All structures or obstructions found within the street or shown on the plans which are not to remain in place or which are not to be used in the new construction shall be removed as directed the Engineer. The removal of such structures, obstructions or parts thereof, when not specified in the Contract but subsequently required, shall be paid for as Extra Work. All material found on the street or removed therefrom shall remain the property of the Owner unless otherwise indicated.

The Contractor shall not excavate any material from within the street right-of-way which is not within the excavation as indicated by the slope and grade lines, without being authorized in writing by the Engineer.

#### FINAL CLEANING UP

Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. He shall cut all brush and wood within the limits indicated and shall leave the street in a neat and presentable condition. Material removed from the project shall not be deposited on adjacent properties unless so directed by the Engineer or his representative. Brush, stumps, trees, waste excavation, or other materials shall be disposed of at the site (or sites) stated in the Special Provisions, and in the manner described in such Special Provisions. The Contractor shall restore, at his own cost and expense, all work completed under other previous contracts which has been damaged by his operations in general conformity with the specifications for the item or items involved. Final clean up shall be considered subsidiary and incidental to the other items of the contract, and no separate or additional compensation will be made therefore. Work days shall be charged against the Contractor until all clean up is completed to the satisfaction of the Engineer.

CONTROL OF WORK

AUTHORITY OF ENGINEER

All work shall be done under the supervision of the Engineer and to his satisfaction. He shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress of the work, interpretation of the plans and specifications, acceptable fulfillment of the contract, compensation, and dispute and mutual rights between Contractors under the specifications. He shall determine the amount and quantity of work performed and materials furnished and his decision and estimate shall be final. His estimate in such event shall be a condition precedent to the right of the Contractor to receive money due him under the contract. The Engineer shall have executive authority to enforce and make effective such decisions and orders as the Contractor fails to carry out promptly, and in case of failure on the part of the Contractor to execute work ordered by the Engineer, the Contractor hereby agrees that the Engineer may, at the expiration of a period of forty-eight (48) hours after giving notice in writing to the Contractor, to proceed to execute such work as may be deemed necessary and the cost thereof shall be deducted from compensation due or which may become due the contractor under the contract.

All decisions of the Engineer shall, when so requested, be rendered in writing. These decisions shall be final and conclusive.

CONFORMITY WITH PLANS AND SPECIFICATIONS

All work performed and all materials furnished shall be in conformity with the lines, grades, cross-sections, dimensions and material requirements shown on the plans or indicated in the specifications. It shall be finished to produce quality work and appearance within the limits of precision expected of a competent Contractor.

The lines, grade, typical sections, and dimensions shown on the plans are subject to adjustment by the Engineer during construction, but any deviation of a character not contemplated or provided for in the plans or specifications that may be required to successfully complete the project will be determined by the Engineer and authorized by him in writing.

In the event the Engineer finds the materials or the finished product in which the materials used are not within reasonably close conformity with the plans and specifications through no willful neglect or omission by the Contractor but that reasonably acceptable work has been produced, he shall then make a determination if the work shall be accepted and remain in place. In this event, the Engineer will document the basis of acceptance by contract modification which may provide for appropriate adjustment in the contract price for such work or materials as he deems necessary to conform to his determination based on engineering judgment.

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.

COORDINATION OF SPECIFICATIONS, PLANS AND SPECIAL PROVISIONS

These specifications, the plans, special provisions, and all supplementary plans and documents are essential parts of the contract, and a requirement occurring in one is just as binding as though occurring in all. They are intended to be cooperative, to describe and provide for a complete work. In case of discrepancy, stated dimension, unless obviously incorrect shall govern over scaled dimensions. Plans shall govern over specifications and special provisions shall govern over both plans and specifications.

The Contractor shall not take advantage of any apparent error or omission in the plans or specifications. In the event the Contractor discovers any apparent error or discrepancy, he shall immediately call upon the Engineer for his interpretation and decision, and such decision shall be final.

#### COOPERATION OF CONTRACTOR

The Contractor will be supplied with two copies of the plans, specifications, and special provisions. He shall have available on the work site at all times one copy each of said plans, specifications and special provisions. He shall have available on the work site at all times one copy each of said plans, specifications, and special provisions. Additional copies of plans, specifications, and special provisions can be obtained by the Contractor for the cost of reproduction.

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof and he shall cooperate with the Engineer and his inspectors and with other Contractors in every way possible. The City reserves the right at any time to contract for and perform other or additional work on or near the work covered by the contract.

The Contractor shall be held responsible for any damage done by him or his agents to the work performed by another contractor. Each Contractor shall conduct his operations and maintain the work in such condition that adequate drainage shall be in effect at all times.

In case of a dispute arising between two or more contractors engaged on the same improvement or in different improvements as to the respective rights of each under the specifications, the Engineer shall be the arbitrator and his decision shall be final and binding on all parties concerned and shall not be cause for any extra compensation to any of the parties involved.

The Contractor shall have a competent, English-speaking superintendent on the work at all times who is fully authorized as his agent on the work, such superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instruction from the Engineer, or his authorized representative.

#### MAINTENANCE OF FIELD OFFICE

If a field office is specified, the Contractor shall furnish for use of the field engineers and inspectors, an approved weatherproof building. The building shall be located conveniently near construction and shall be separated from any building used by the Contractor. The floor space shall not be less than ten (10) x twelve (12) feet, the ceiling not less than eight (8) feet in height, and there shall be at least three single-sash lighting windows. It shall be furnished with a wooden locker large enough for the string of implements and testing equipment and with one bracketed wall table at least three (3) x six (6) feet in dimension. The Contractor shall furnish heat, air conditioning, and light, and shall also furnish a telephone for the building at his own expense.

Payment for this building will be paid for at the lump sum contract price for Field Office. All costs connected with this item shall be included in this lump sum unit price. The Contractor and his superintendent shall provide all reasonable facilities to enable the Engineer and inspector to inspect the workmanship and materials entering into the work.

#### CONSTRUCTION STAKES

The Engineer will furnish the Contractor with all lines, grade, and measurements necessary to the proper prosecution and control of the work contracted for under these specifications. The Contractor shall satisfy himself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any error which may have been made in laying out the work. Such stakes and markings as the Engineer may set for either his own or the Contractor's guidance shall be carefully preserved by the Contractor. If said stakes or markings are removed or destroyed by the Contractor, or his employees, an amount equal to the

cost of replacing the same may be deducted from subsequent estimate due the Contractor, at the discretion of the Engineer.

#### APPROVAL OF SOURCES OF SUPPLY OF MATERIALS

The source of supply of each of the materials required shall be approved by the Engineer before delivery is started. Representative preliminary samples may be submitted by the Contractor, producer, or owner of the supply for inspection or tests. The results obtained from testing such samples may be used for preliminary approval but will not be used as a final acceptance of the materials. All materials proposed to be used may be tested at any time during their preparation and use. If, after trial, it is found that sources of supply which have been approved do not furnish a product of uniform quality, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from another source.

#### APPROVAL AND ACCEPTANCE OF MATERIALS

Samples of all materials for test upon which is to be based the acceptance or rejection, shall be taken by the Engineer or his authorized representative at the discretion of the Engineer. Materials may be sampled either prior to shipment or after being received at the place of construction. All sampling, inspection, and testing shall be done in accordance with the methods hereinafter prescribed.

The Contractor shall provide such facilities as the Engineer or his representative may require for conducting field tests and for collecting and forwarding samples. The Contractor shall not use or incorporate into the work any materials represented by the samples until tests have been made and the material found to be acceptable. Only materials conforming to the requirements of these specifications and which have been approved by the Engineer or his authorized agents will be used in the work. Any material which, after approval, has for any reason become unfit for use shall not be incorporated into the work.

#### METHODS OF SAMPLING AND TESTING

Except as otherwise provided, sampling and testing of all materials, and the laboratory methods and testing equipment under these specifications shall be in accordance with the latest edition of the "Standard Specifications for Highway Materials and Methods of Sampling and Testing" of A.A.S.H.T.O. Sampling and testing materials not covered by A.A.S.H.T.O. Specification, and not otherwise provided for, shall be in accordance with the Standards and Tentative Methods of the A.S.T.M. being the latest applicable specifications published by the A.S.T.M.

The testing of samples and materials shall be made at the expense of the Owner. Laboratory sieves shall have square openings of the sizes specified. The Contractor shall furnish the required samples without charge. The Contractor shall give sufficient notifications of the placing of orders for materials to permit testing.

#### STORAGE

Materials shall be stored so as to insure the preservation of their equality and fitness for the work. When considered necessary they shall be placed on wooden platforms, or other hard, clean surfaces and not on the ground, and shall be placed under cover when directed. Stored materials shall be located so as to facilitate prompt inspection.

#### AUTHORITY AND DUTIES OF INSPECTIONS

Agents of the Owner, shall be authorized to inspection all work done and all material 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 is not authorized to revoke, alter, or waive any requirements of the specifications. He is authorized to call the attention of the contractor to any failure of the work or materials to

conform to the specifications and contract. He shall have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer.

The inspector shall in no case act as foreman or perform other duties for the Contractor nor interfere with the management of the work by the later. Any advise which the inspector may give the Contractor shall in no way be construed as binding to the Engineer in any way, or releasing the Contractor from fulfilling all of the terms of the contract.

If the Contractor refuses to suspend operation on verbal order, the inspector shall issue a written order giving the reason for shutting down the work. After placing the order in the hands of the person in charge, the inspector shall immediately leave the job. Work done during the absence of the inspector will not be accepted or paid for.

### INSPECTION

The Contractor shall furnish the Engineer with every reasonable facility for ascertaining whether or not the work, as performed, is in accordance with the requirements and intent of the specifications and contract. 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 unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed, shall be at the Contractor's expense. Any work done or materials used without suitable supervision or inspection by the Engineer or his authorized representative may be ordered removed and replaced at the Contractor's expense.

### REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

All materials furnished and work done will be inspected by the Engineer and/or his authorized agent, and if not in accordance with these specifications, they will be rejected and shall immediately be removed from the premises and other materials furnished and work done in accordance herewith.

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

Upon failure of the Contractor to repair satisfactorily or to remove and replace, if so directed, rejected, unauthorized, or condemned work or material immediately after receiving formal notice from the Engineer, the Engineer shall have the right and authority to stop the Contractor in his work at once and the Engineer shall cause the faulty work and materials to be removed and corrected at the expense of the contractor. The

Contractor hereby agrees that any expense incurred by the Owner may be recovered on the Contractor's bond, by action in a court having proper jurisdiction over such matters, or such costs may be deducted from the moneys then due or to become due to the Contractor.

If, for any reason, the Engineer shall fail or neglect to correct any faulty or defective material or work as outlined above, the Contractor shall not be relieved of correcting said material or work and the right of final acceptance or condemnation of the work shall not be waived in any manner by reason of said failure or neglect on the part of the Engineer.

## DISPUTED CLAIMS FOR EXTRA WORK

In case the Contractor deems extra compensation is due him for work or materials not clearly covered in the contract, or not ordered by the Engineer in writing of his intention to make claim for such extra compensation before he begins the work on which he bases the claim and shall account to the Engineer the actual cost of the work and shall afford the Engineer every facility for keeping actual costs thereof.

Failure on the part of the Contractor to give such notification or to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for such extra compensation. The filing of such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed to prove the validity of the claim. When the work has been completed, the Contractor shall within ten (10) days file his claim for extra compensation with the Engineer, who will present it to the Owner for consideration.

## GUARANTEE

Unless otherwise stated in the special provisions, the Contractor shall guarantee the work performed under this contract for a period of one year from the date of final acceptance by the Engineer against defects in workmanship and materials. If any defect should appear during the guarantee period, the Contractor shall make required replacement or acceptable repairs of the defective work at this own expense. This expense includes total and complete restoration of any disturbed surface to original or better than original condition which existed before the repairs or replacement, regardless of improvements on lands where the repairs or replacement will be required.

### Section 106

## LEGAL REQUIREMENTS AND PUBLIC RESPONSIBILITY

### LAWS TO BE OBSERVED

The Contractor shall at all times observe and comply with all Federal and State laws, local laws, ordinances and regulations which in any manner affect the conduct of the work, and all such orders or decree as exist at the present or which may be enacted later, of bodies or tribunals having jurisdiction or authority over the work, and no pleas of misunderstanding or ignorance thereof will be considered. He shall indemnify and save harmless the City and all of its officers, agents, employees, and servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by himself, his employees, or his agents.

The movement of vehicles or equipment over any public highway to the project, necessary for the prosecution of the work, shall be regulated in accordance with the provisions of the Wisconsin Statutes.

### PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

### 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 process covered by letters patent or copyrights, the right for such use shall be provided for by suitable legal agreement with the patentee or owners and a copy of this agreement shall be filed with the Engineer; however, whether or not such agreement is made

or filed as noted, the Contractor and the surety in all cases shall indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process to be involved under the contract, and shall indemnify the said City for any costs, expenses, and damages which it may be obliged to pay, by reason of any such infringement, at any time the prosecution or after the completion of the work.

### SANITARY PROVISIONS

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Wisconsin State Board of Health or of other authorities having jurisdiction, and shall commit no public nuisance.

### PUBLIC CONVENIENCE AND SAFETY

The Contractor shall avoid as far as possible the maintenance of any condition which might be deemed at law to be an "attractive nuisance". The Contractor and his Surety shall be responsible for all damage, bodily injury, or death arising through his maintaining an attractive nuisance or otherwise.

If the Contractor desires to use water from public hydrants, he shall make application to the proper authorities, and shall conform to the City ordinances, rules and regulations concerning their use.

Fire hydrants shall be accessible at all times to the Fire Department. No material or other obstructions shall be placed closer to a fire hydrant than permitted by ordinances, rules, or regulations, or within five (5) feet of a fire hydrant in the absence of such ordinances, rules or regulations.

The Contractor shall give notice in writing to the proper authorities in charge of the streets, gas and water pipes, electric and other conduits, railroads, poles, manholes, catch basins and all other property that may be affected by the Contractor's operations, at least seventy-two (72) hours before breaking ground. The Contractor shall not hinder or interfere with any persons in the protection of such work, or with the operation of utilities, at any item. The Contractor must obtain all necessary information in regard to existing utilities. He shall protect such utilities from injury and shall avoid unnecessary exposure so that they will not cause injury to the public. In case of any damage whatsoever, the cost of making repairs will be borne by the Contractor.

The Contractor must also obtain all necessary information in regard to the planned installation of new utilities and new cables, conduits and transformers, make proper provisions and given proper notification so that new utilities and electrical equipment can be installed at the proper time without delay to the Contractor or unnecessary inconvenience to the Owner. The locations of new utilities and electrical equipment, planned to be installed concurrently with the highway improvement, shall not be covered with pavement prior to installation of such facilities.

When the work involves excavation adjacent to any building along the work, the Contractor must give the property owner and the Owner due and sufficient notice thereof. The Contractor and Surety shall hold the municipality in which the work is done harmless from any damage resulting from loss of lateral support of any such building.

### BARRICADES, WARNING SIGNS, AND FLAGMEN

All work sites in this contract shall be signed and barricaded in accordance with the latest State of Wisconsin Department of Transportation Manual of Uniform Traffic Control Devices. No more than one lane of any street shall be closed to traffic at any time without prior approval of the Engineer. No equipment or materials shall be stopped, loaded or stored in a location which will hinder, distract, or impede a safe and suitable traffic operation on lanes of the roadway required to be kept open to traffic unless otherwise approved by the Engineer.

He shall at all times at his own expense, keep the roadbed in such condition that the public can travel the same in convenience and safety. Traffic service will be given precedence over other work, and the Contractor's failure to comply with these requirements shall be cause for suspension of other operations until compliance has been secured.

The Contractor will be held responsible for all damages to the work due to failure of barricades, signs, lights, flagmen and watchmen to protect it, and the Engineer may order the damaged portion immediately removed and replaced by the Contractor without cost to the City, if, in his opinion such action is justified. The Contractor's responsibility for the maintenance of barricades, signs, and lights shall not cease until the project has been accepted.

The suspension of operations by order of the Engineer or otherwise, shall in no way relieve the Contractor of the obligation of providing and maintaining barricades, signs and lights as set forth above.

The Contractor shall provide a local man, responsible for providing and maintaining warning lights, and barricades on the project whenever the Contractor shuts down his operations for a period of time (nights or weekends). His name, address and phone number shall be given to both the Engineer and the Police Department.

If, in the Engineer's opinion, it becomes necessary to apply a dust palliative along the construction projects to relieve abutting homeowners from unreasonable dirt and dust conditions, the Contractor shall furnish and apply such dust preventives at his own expense. The Contractor shall take all reasonable measures to protect the Owner from extensive complaints regarding dust, as well as complaints pertaining to dirt or debris dropped on streets leading to the waste disposal areas during pavement removal and excavating operations.

#### PROTECTION AND RESTORATION OF PROPERTY AND PROPERTY MARKS

The Contractor shall notify, in writing, the Owners of all corporate or private property which interferes with the work advising them of the nature of the interference, and shall arrange with them for the disposition of such property. The Contractor shall furnish the Engineer upon request with copies of all such notifications and final agreements.

The Contractor shall use every precaution to prevent the damage or destruction of corporate or private property such as poles, trees, shrubbery, crops and fences adjacent to or interfering with the work; all overhead structures such as wires, cables, etc., and all underground structures such as water or gas shut-off boxes, water meters, pipes, conduits, etc., within or outside of the right-of-way. He shall protect and carefully preserve all property marks until the Owner or an authorized surveyor or agent has witnessed or otherwise referenced their location or relocation.

The Contractor shall be responsible for the damage or destruction of property of any character resulting from neglect, misconduct, or omission in his manner or method of execution or non-execution of the work, or caused by defective work or the use of unsatisfactory materials, and such responsibility shall not be released until the work shall have been completed and accepted and the requirements of the contract complied with.

When public or private property is damaged or destroyed, the Contractor shall, at his own expense, restore such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or replacing it as may be directed, or he shall otherwise make good such damage or destruction in any acceptable manner. If he fails to do so, the Engineer may, after the expiration of a period of forty-eight (48) hours after giving notice to him in writing, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary, and the cost thereof shall be deducted from any compensation due or which may become due the contractor under his contract.

The Contractor will be liable for all damage caused by fires and shall under no consideration start fires without securing the necessary permits and approval of the State Fire Warden, City Fire Chief, Department of Natural Resources or other authority having jurisdiction even though he may be ordered or required to do such burning.

#### RESPONSIBILITY FOR DAMAGE CLAIMS

The Contractor and his Surety shall indemnify and save harmless the City, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages on account of the operations of the said Contractor; or on account of, or in consequences of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect or misconduct of said Contractor; or because of any claims or amounts recovered for any infringement of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Workmen's Compensation Law; or any other law, ordinance, order or decree; and so much of the money due the said Contractor under and by the City for such purposes, may be retained for the use of the City; or, in case no money is retained, his Surety shall be held.

The City shall not be liable to the Contractor for damages or delays resulting from work by third parties or by injunctions or other restraining orders obtained by third parties.

The Contractor shall provide and maintain during the effective life of his contract public liability and property damage liability insurance to protect him and all of his construction subcontractors, together with the Owner, from claims for damages for personal injury, accidental death, and damage to property, which may arise from operations under his contract, whether such operations be by himself or by any such subcontractor or by anyone directly or indirectly employed by either of them.

#### OPENING OF SECTION OF HIGHWAY TO TRAFFIC

The work under construction shall not be opened to traffic until so directed or authorized by the Engineer. Whenever, in the opinion of the Engineer, all of the work or any portion thereof is in an acceptable condition for travel, such portions may be opened to traffic as may be directed by the Engineer in writing, but such opening shall not be construed as assumption of the maintenance by the Owner as prescribed under "Partial Acceptance" unless so specifically provided, nor as an acceptance of the roadway or any part of it, nor as a waiver of any part of it, nor as a waiver of any of the provisions of the specifications and contract.

Whenever the Contractor is required to open to traffic all of the work or any portion thereof in accordance with the provisions given herein, or whenever he shall of his own volition and when so authorized by the Engineer, open to traffic all of the work or any portion thereof prior to final acceptance, he shall conduct the remainder of his construction operation so as to cause the least obstruction to traffic.

#### CONTRACTOR'S RESPONSIBILITY FOR WORK

The work shall be under the charge and care of the Contractor until final acceptance by the Engineer, except when otherwise provided in a manner as prescribed under "Partial Acceptance" and the Contractor shall take every precaution against injury or damage to the work or to any part thereof, and shall preserve and maintain the same at his own cost and expense.

#### PERSONAL LIABILITY OF PUBLIC OFFICIALS AND EMPLOYEES

In carrying out any of the above provisions or in exercising any power or authority granted to him by this contract, there shall be no liability upon said Engineer or his authorized assistants, either personally or as an official of the City, it being understood that in such matters he acts as an agent and representative of the City.

## NO WAIVER OF LEGAL RIGHTS

The City shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after, the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials, furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the contract. The City shall not be precluded or estopped, notwithstanding any such measurements, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and his Sureties such damages as it may sustain by reason of his failure to comply with the terms of the contract. Neither the acceptance by the City nor any representative of the City, nor any payment for or acceptance of the work or any part of the work, nor any extension of time, nor any possession taken by the City, shall operate as a waiver of any portion of the contract, or of any power herein reserved, or any right to damages herein provided. A waiver of any breach of the contract shall not be held to be waiver of any other or subsequent breach.

## INSURANCE REQUIREMENTS

The Contractor shall purchase and maintain such insurance as will protect him and the City of Fond du Lac, its officials and employees, from claims which may arise out of or result from the Contractor's execution of the work, whether such execution by himself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

No Contractor shall commence work on any contract until he has obtained all insurance required under this section and such insurance has been approved by the City. Nor shall any Contractor allow any subcontractor to commence work on his subcontract until the same insurance has been obtained by the subcontractor and approved by the City. Each and every Contractor and subcontractor shall maintain all required insurance under this section during the life of the contract.

1. Certificates of Insurance: Certificates of Insurance on all policies specified shall be filed with the Engineer which shall include a fifteen (15) day prior written notice of material change or cancellation to the City and which will clearly state that contractual liability insurance is provided and, if applicable to work under this contract, explosion, collapse and underground coverage.
2. Types of Insurance:
  - a) Workmen's Compensation Insurance to meet Wisconsin Statutory requirements.
  - b) Automobile Liability Insurance: limits of liability applicable to automobile insurance shall be not less than: Bodily Injury and Property Damage Liability \$1,000,000 each occurrence, \$1,000,000 aggregate or \$1,000,000 Single Limit Comprehensive Automobile Liability to include all owned non-owned, and hired automobiles. \$1,000,000 for Property Damage.
  - c) Public Liability and Property Damage Insurance: Limits of Liability applicable to Public Liability and Property Damage Insurance shall not be less than:
    - \$2,000,000 for injuries, including accidental death, to any one person, and subject to the same limit for each person.
    - \$2,000,000 aggregate or \$2,000,000 Single Limit.
    - \$2,000,000 for Property Damage.
  - d) The Contractor shall secure, if applicable, "All Risk" type Builders Risk Insurance for work to be performed. Unless specifically authorized by the owner, the amount of such insurance shall not be less

than the contract price totaled in the bid. The policy shall cover not less than the losses due to fire, explosion, hail, lighting, vandalism, theft, malicious mischief, wind, collapse, riot, aircraft, and smoke during contract time, and until the work is accepted by the Owner.

The above policies shall name as the insured the Contractor and the Owner, as an additional insured.

3. Indemnification of the City and its Officials: The Contractor shall indemnify and hold harmless the City, its officers, agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the City, its officers, agents and employees by any employees of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Workmen's Compensation Act, disability benefit acts or other employee benefit acts.

#### PERSONAL LIABILITY OF THE OWNER, AND ITS EMPLOYEES AND AGENTS

In carrying out any of the provisions of this contract or in exercising any power or authority granted to them thereby, there shall be no personal liability upon the City, its agents and employees, it being understood that in such matters they act as agents and representatives of the City. Any right of action by the Contractor against the City, or its agents and employees, is hereby expressly waived.

#### PUBLIC WORKS CONTRACT WAGE RATES

The Contractor, on any public works contract with the City of Fond du Lac, shall submit upon demand of the City a certified copy of his payroll which shall indicate the hourly wage rates being paid; and the number of hours being worked by each employee, and the City's right to so demand shall continue during the life of the contract.

The hours and current minimum wage rates to be paid pursuant to Section 66.0903 Wisconsin Statutes (See City Clerk's File) are incorporated into and made a part of this contract. Said schedule may be attached at the end of these specifications for the Contractor's information, but it shall be the Contractor's responsibility to check the data listed in such schedule to insure that all such information is current and correct.

The bidder shall note that under Wisconsin Statutes Subsection 66.0903(8) a copy of the wage rates determination issued for this project must be posted in a least one conspicuous and easily accessible place at the site of the project. It shall be the responsibility of the successful bidder under this contract to make such posting as required above.

Also, Subsection 66.0903(9) requires that upon completion the project and prior to final payment, each Contractor must file with the municipality an affidavit stating that he has complied fully with the provisions and requirements of the wage rate determination and that he has received evidence of compliance from each of his agents and subcontractors. The Owner or City will not make final payment on this contract until the successful bidder has furnished the City with such evidence of compliance.

## EQUAL OPPORTUNITY

In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disabilities as defined in Section 51.01 (5), Wisconsin Statutes, sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available for employees and applicants, employment notices to be provided by the contracting officer setting forth the provision of the non-discrimination clause.

## SECTION 107

### PROSECUTION AND PROGRESS

#### SUBLETTING OR ASSIGNMENT OF CONTRACT

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or his right, title, or interest therein, without written consent of the Owner.

Consent to sublet any portion of the contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract or to release the Contractor of his liability under the contract and bond.

All transactions of the Engineer shall be with the Contractor; subcontractors shall be recognized only in the capacity of employees or workmen and shall be subject to the same requirements as to character and competence.

Request for permission to sublet any portion of the contract shall be in writing and accompanied by a showing that the organization which will perform the work is particularly experienced and equipped for such work. The Engineer may also require that each request be accompanied by a copy of the proposed subcontract. Any subsequent change in the terms of the subcontract shall be subject to separate approval.

Work by a subcontractor shall not proceed until the request for permission to sublet such work is approved. If the Contractor proposes to have work performed by a person or firm other than a subcontractor, he shall inform the Engineer in writing, if required, of the specific arrangement under which the work will be performed, so that it may be established whether or not such arrangement constitutes subcontracting.

#### PROSECUTION OF THE WORK

Unless otherwise provided in the Special Provisions, the Contractor shall not begin the work to be performed under the contract before receiving written notification from the Engineer to do so, and shall thereupon begin the work within ten (10) days after the date of such written notice.

Definite notice of intention to start work shall be given to the Engineer at least seventy-two (72) hours in advance of beginning work.

The Contractor shall employ an ample force of workers and provide construction plant properly adapted to the work and of sufficient capacity and efficiency to accomplish the work in a safe and workmanlike manner at the rate of progress specified. All plants shall be maintained in good working order and provision shall be made for immediate emergency repairs.

Should the Contractor fail to maintain the rate of progress required to complete the work within the contract time specified, the Engineer may require that (either or both) additional workers and equipment be placed on the work, or a reorganization of plant layout be effected in order that the work will be brought up to schedule and maintained there. Should the Contractor fail to comply therewith, the Engineer may proceed under the provisions of Default of Contract.

In the event work is prosecuted during adverse weather conditions, the Contractor will be required to exercise such precautions necessary to produce satisfactory work, and shall protect the finished work from the elements. It is agreed and understood that the cost thereof has been included in the unit prices bid for the various items of work in the contract and that no extra compensation will be allowed therefore.

#### LIMITATION OF OPERATIONS

The Contractor shall conduct his work so as to create a minimum amount of inconvenience to vehicular and foot traffic. At any time when, in the judgment of the Engineer, the Contractor has obstructed or closed, or is carrying on operations on a greater portion of the street than is necessary for the proper prosecution of the work, the Engineer may require the Contractor to finish the sections on which work is in progress before work is started on any additional sections.

#### CHARACTER OF WORKMEN

The Contractor shall employ such superintendents, foremen and workers as are able and competent. The Engineer may demand in writing the dismissal of any person or persons employed by the Contractor, about or upon the work who shall misconduct himself or themselves or be incompetent or negligent in the due and proper performance of his or their duties, or neglects or refuses to comply with the direction given, and such person or persons shall not be employed again thereon without the written consent of the Engineer. Should the Contractor continue to employ or again employ such person or persons, the Engineer may withhold all estimates which are due or may become due, or the Engineer may suspend the work until such orders are complied with.

#### METHODS AND EQUIPMENT

The Contractor shall provide and furnish the machinery equipment and tools necessary to perform the work. These shall be in such condition and of such capacity to produce a satisfactory quality of work and to complete the same within the contract time.

Equipment shall be such that no injury to the roadway, structures, adjacent property, or other highways will result from its use, and it shall conform to the requirements set forth in detail under specific items or classes of work.

The gross weight of vehicle and load for vehicle used in the transportation of materials for pavements, base courses and shoulders over the subgrade, base course, or pavement shall not exceed that permitted by the Wisconsin Statutes for Class "A" highways.

Failure on the part of the Contractor to provide adequate equipment, maintained in proper working order, may be sufficient cause for suspension of specific operations until compliance is attained or may constitute cause for Default of Contract.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the contract, the Contractor is free to use any methods or equipment that he demonstrates to the satisfaction of the Engineer will accomplish the contract work in conformity with the requirements of the contract.

When the contract specifies the use of certain methods and equipment for the work, such methods and equipment shall be used unless others are authorized by the Engineer. If the Contractor desires to use a method

or type of equipment other than those specified in the contract, he may request authority from the Engineer to do so. The request shall be made in writing and shall include a full description of the methods and equipment proposed and the reason for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing construction work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the deficient work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the construction items involved nor in contract time as a result of authorizing a change of methods or equipment under these provisions.

#### TEMPORARY SUSPENSION OF WORK

The Engineer shall have the authority to suspend the work wholly or in part for such period or periods as he may deem necessary, due to unsuitable weather and such other conditions as are considered unfavorable for prosecution of satisfactory work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given to perform any or all provisions of the contract. Authorizations or orders to suspend work shall be in writing. Unless otherwise specifically provided, no additional or extra compensation or additional contract time will be allowed due to suspension of operations.

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

#### DETERMINATION AND EXTENSION OF CONTRACT TIME FOR COMPLETION

The time for completion of the work contemplated under the contract will be specified in the proposal either as a specific number of calendar days including Sundays and Holidays, or as a given date. It is understood that the completion of the work with the time as specified is an essential part of the contract.

Work shall be prosecuted diligently to completion. Failure to begin operations, or in the diligent prosecution thereof within the intent of this subsection, may be considered as a breach of contract and render the Contractor liable to action under Default of Contract, or the revocation of his privilege to bid additional work, or both.

The contract starting date, for purposes of determining contract time charges and extensions, is defined as follows:

When the contract provides for started work by a fixed or given calendar date, such date will be construed to be the contract starting date irrespective of the date construction operations are started.

When the contract provides for starting work not later than ten (10) days after the date of written notification from the Engineer to do so, or not later than ten (10) days after the date of official notification to the Contract of the final execution of the contract, the contract starting date will be construed to be the date construction operations are started or the tenth day following the date of such notification, whichever is earlier.

Contract time on the calendar day basis will not be charged during periods of complete suspension of operations, when approved by the Owner in conjunction with an order by the Engineer suspending operations as elsewhere herein set forth, or when so provided in the Special Provisions.

Contract time will be extended in an amount as is mutually agreed on by the Owner and the Contractor, on the basis of Contract Change order involving alterations in the contract affecting the prosecution of work, or involving extra or additional work, when such alterations are necessary for the purposes or convenience of the Owner, or when such extra or additional work is of such character or is ordered to be done at such a time that the amount of time reasonably necessary to perform such work is disproportionate to the contract time originally set up in the proposal. The agreement for extended time on this account shall be arrived at concurrently with and as a part of the consideration for the specific alteration or extra or additional work covered by that order. In the event no specific mention thereof is made in such order the value of the extra or additional work will be included in the computation for extension of contract time for increased value of work hereinafter set forth.

In the event that the money value of work completed, exclusive of such extra or additional work for which additional time has been agreed upon as herein before set forth, is in excess of the amount of the original contract, the contract time will be extended proportionately in an amount, computed to the nearest whole day, in the ratio that the final cost of the work, exclusive of the cost of such extra or additional work for which additional time had been agreed upon as previously set forth, bears to the total amount of the original contract. When a contract completion date is stipulated, the equivalent contract time for this purpose will be construed as the total elapsed calendar days between the contract starting date and the contract completion date.

Should the Contractor find it impossible to complete with work on or before the time for completion as specified in the contract, or extended as above set forth, he may, at any time prior to stipulated for completion, or extended as above set forth, make a written request to the Engineer for an extension of time, setting forth therein the reasons which he believes will justify the granting of this request. If the Owner finds that the work was delayed because of conditions beyond the control of the Contractor, he may grant an extension of time for completion in such an amount as he finds to be warranted and justified.

**FAILURE TO COMPLETE WORK ON TIME**

Should the Contractor fail to complete the work within the time agreed upon in the contract or within such extra time as may have been allowed by the extensions, there shall be deducted from any moneys due or that may become due the Contractor the sum set forth in the following schedule for each and every calendar day, including Sundays and Holidays, that the work shall remain uncompleted. This sum shall be considered and treated not as a penalty but as fixed, agreed and liquidated damages due the Owner from the Contractor by reason of inconvenience to the public, added cost of engineering and supervision, maintenance of detours and other items which have caused an expenditure of public funds resulting from his failure to complete the work within the time specified in the contract.

Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Owner of any of its rights under the contract.

**SCHEDULE OF LIQUIDATED DAMAGES**

The fixed, agreed and liquidated damages shall be assessed in accordance with the following schedule.

| <b>Original Contract Amount</b> |           | <b>Daily Charge</b> |                    |
|---------------------------------|-----------|---------------------|--------------------|
| <b>From</b>                     | <b>To</b> | <b>Calendar Day</b> | <b>Working Day</b> |
| \$0                             | \$50,000  | \$100               | \$250              |
| 50,000                          | 100,000   | 150                 | 275                |
| 100,000                         | 300,000   | 200                 | 425                |
| 300,000                         | 500,000   | 325                 | 675                |
| 500,000                         | 1,000,000 | 475                 | 1,200              |
| 1,000,000                       | --        | 550                 | 1,300              |

The sum shall be considered and treated not as a penalty but as a fixed, agreed, and liquidated damages due to the City of Fond du Lac from the Contractor by reason of inconvenience to the public, added cost of engineering and supervision and other items which have caused an expenditure of public funds resulting from failure to complete the work within the time specified in the proposal.

Permitting the Contractor to continue working after the expiration of the time fixed for its completion or after the date of time extension shall in no way act as a waiver on the part of the City of Fond du Lac for any of its rights under the contract.

#### DEFAULT OF CONTRACT

If the Contractor fails to begin the work under contract within the time specified, or fails to perform the work with sufficient workmen and equipment or with sufficient material to insure the completion of said work within the specified time, or shall perform the work unsuitably, or shall neglect or refuse to remove materials or perform anew such work as shall be rejected as defective and unsuitable, or shall discontinue the prosecution of the work, or if the Contractor shall become insolvent or be declared bankrupt, or shall commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors or if the Contractor is determined to be in violation of the provisions of the contract relative to hours of labor, wages, character, and classification of workmen employed, or from any other cause whatsoever shall not carry on the work in an acceptable manner, the Engineer shall give notice in writing to the Contractor and his Surety of such delay, neglect, or default, specifying the same; and if the Contractor, within a period of ten (10) days after the date of such notice, shall not proceed in accordance therewith, then the Owner shall, upon written certification by the Engineer of the fact of such delay, neglect or default and the Contractor's failure to comply with such notice, have full power and authority to forfeit the rights of the Contractor and at its option to call upon the Surety to complete the work in accordance with the terms of the contract; or it may take over the work upon giving notice to the surety, including any or all materials and equipment on the ground as may be suitable and acceptable, and may complete the work by or on its own force account, or may enter into a new agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as, in its opinion, shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the Owner together with the cost of completing the work under contract, shall be deducted from any moneys due or which may become due on such contract. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under the contract if it had been completed by said Contractor, then said Contractor shall be entitled to receive the difference subject to any claims for liens thereon which may be filed with the Owner, or any valid assignment filed with it, and in case such expense shall exceed the sum which would have been payable under the contract, the Contractor and the Surety shall be liable and shall pay to the Owner the amount of such excess.

#### EMERGENCY DEFERMENT OR CANCELLATION OF CONTRACT

1. General: The Owner and the Contractor, in the event of a national emergency that creates a shortage of materials, labor, or equipment, (a) by reason of war conditions involving the United States, or (b) by reason of orders of the United States Government or its duly authorized agencies, or (c) executive order with respect to prosecution of war or national defense, may upon a finding by the Owner that such emergencies do exist, and by reason of which such Contractor is unable to proceed with his construction contract, or any part thereof, as hereinafter provided.
2. Deferment: In all cases where construction is deferred, it shall be done by written agreement between the Owner and the Contractor stating the terms and condition of such deferment. In such cases, the Contractor will be paid for eighty-five (85) percent of the amount of work already completed, at contract unit prices, or agreed prices where no unit prices were included in the contract. Provided, however, that when such action is advisable, the Owner and Contractor, with the written approval of Surety for the Contractor, may upon approval by the Engineer make partial payment as herein provided for not to exceed ninety-two and one

half (92 ½) percent of such amount of work already completed. If agreement upon the terms and conditions of such deferment cannot be agreed upon, the original contract is to remain in full force and effect.

3. Cancellation: Where the contract, or any portion thereof is definitely terminated or canceled; the Contractor released before all items of work included in his contract have been completed, payment will be made for actual items of work completed at contract unit prices, or agreed prices where no unit prices are contained in the contract, and no claim for less of anticipated profits shall be considered. Acceptable materials, obtained by the Contractor for the work, that have been inspected, tested and accepted by the Owner, and that are not incorporated in the work, may, at the option of the Owner, be purchased from the Contractor at actual cost as shown by receipted bills at such points of delivery as may be designated by the Owner.

If agreement upon the terms and conditions of cancellation of all or any part of any construction contract cannot be agreed upon, the original contract, or uncompleted part thereof, shall remain in full force and effect.

#### TERMINATION OF THE CONTRACTOR'S RESPONSIBILITY

Whenever the improvement contemplated and covered by the contract shall have been completely performed on the part of the Contractor and all parts of the work have been approved and accepted by the Engineer, according to the contract, and the final estimate paid, the Contractor's obligations shall then be considered fulfilled, except as set forth in his Contractor's bond.

### SECTION 108

#### MEASUREMENT AND PAYMENT

##### MEASUREMENT OF QUANTITIES

The determination of quantities of work acceptably completed under the terms of the contract, or as directed by the Engineer in writing, will be made by the Engineer and based on measurements taken by him or his assistants. These measurements will be taken according to the United States standard measure. All surface and linear measurements will be taken horizontally unless otherwise shown on plans or specified. Structures shall be measured to the neat lines as shown on the plans, or as ordered in writing by the Engineer.

When base course, topsoil, surface course, or any materials are measured by the cubic yard in the vehicle, such measurement shall be taken at the point of delivery. The capacity of all vehicles shall be plainly marked on said vehicle and the capacity or marking shall not be changed without permission of the Engineer. The Engineer may require all vehicles to have uniform capacity.

##### SCOPE OF PAYMENT

The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, equipment, labor, tools, and incidentals necessary to complete the work and for performing all work contemplated and embraced under the contract; also for less of damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the final acceptance by the Engineer, and for all risks of every description connected with the prosecution of the work, for all expenses incurred in consequence of the suspension or discontinuance of the work as herein specified, and for any infringement of patent, trade-mark, or copyright; and payment of any estimate or of any retained percentage shall not relieve the Contractor of any obligation to make good any defective work or material.

No moneys, payable under the contract, or any part thereof, except the estimate for the first month or period, shall become due and payable if the Owner so elects, until the Contractor shall satisfy the said Owner by supplying release claims and/or lien waivers that he fully settled or paid for all materials and equipment used in or upon the work and labor done in connection therewith, and the Owner, if he so elects may pay any or all such

bills, wholly or in part, and deduct the amount or amounts so paid from any monthly or final estimate, excepting the first estimate.

In the event the Surety given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in a State revoked as provided by law, the Owner may, at its election, withhold payment of any estimate filed or approved by the Engineer until the Contractor shall give a good and sufficient bond in lieu of the bond so executed by such Surety.

#### PAYMENT FOR INCREASED OR DECREASED QUANTITIES

When alterations in the plans or quantities of work not requiring supplemental agreements, as herein before provided for, are ordered and performed, the Contractor shall accept payment in full at the contract price for the actual quantities of work done. No allowance will be made for anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as stipulated in such agreements.

#### PAYMENT FOR OMITTED ITEMS

The Engineer shall have the right to cancel or alter the portions of the contract relating to the construction of any item or items by the payment to the Contractor of a fair and equitable amount covering all items of costs incurred prior to the date of cancellation, alteration, or suspension of the work by order of the Engineer. The Contractor shall accept payment in full at the contract unit prices for any work actually performed prior to the date of cancellation, alteration, or suspension of the work by the order of the Engineer. No allowance will be made for anticipated profits in reimbursements to the Contractor for omitted items of work. Acceptable materials ordered by the Contractor or delivered on the work prior to the date of cancellation, alteration, or suspension of the work by order of the Engineer will be paid for at the actual cost to the Contractor and shall thereupon become the property of the Owner. The Contractor shall submit immediately certified statements covering all money expended in preparation for work on any omitted item when such preparation has not value to the remaining items of the contract, or for a proportionate amount based on the total contract price over which such preparation would ordinarily be distributed when other items are included in such preparation.

#### PARTIAL PAYMENTS

The Engineer will make written estimates of the materials complete in place and the amount of work performed in accordance with the contract during the current period of time between estimates and the value thereof figured at the contract unit prices. Retained percentages will be in accordance to Wisconsin Statutes 66.0901(9) for public works projects. The retainage shall be an amount equal to not more than 5% of the estimate until 50% of the work has been completed. At 50% completion, further partial payments shall be made in full to the contractor and no additional amounts will be retained unless the engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the contractor. At 50% completion or any time after 50% completion when the progress of the work is not satisfactory, additional amounts may be retained but the total retainage will not be more than 10% of the value of the work completed. When the work has been substantially completed except for work which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the municipality are valid reasons for noncompletion, the municipality may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed. Estimates will be made monthly or for such longer periods as mutually agreed upon. No estimates except final estimates will be made for a sum less than five hundred dollars (\$500.00). The estimates will be approximate only and all partial or monthly estimates or payments shall be subject to correction in the estimates rendered following discovery of an error in any previous estimates.

Should any defective work or material be discovered, or should a reasonable doubt arise as to the integrity of any part of the work completed previous to the final acceptance and payment, there will be deducted from the first estimate rendered after the discovery of such work an amount equal in value to the defective or questioned

work, and this work will not be included in a subsequent estimate until the defects have been remedied or the causes for doubt removed.

#### ACCEPTANCE AND FINAL PAYMENT

Within ten (10) days after the completion of any contract and before final acceptance, a final inspection must be made by the Engineer to determine whether the work has been completed in accordance with the contract, plans and specifications. All prior partial estimates and payments shall be subject to correction in the final estimate and payment. When the work has been so completed and certified to the Owner, the work will be considered accepted and the final estimate shall be executed and submitted.

Neither the final payment nor any provision in the contract documents shall relieve the Contractor of the responsibility for negligence or faulty materials or workmanship, and upon written notice, shall remove any defects due thereto, and pay for any damage due to other work resulting therefrom which shall appear within one (1) year after the date of completion and acceptance. A guarantee fund, equal to one (1%) percent of the contract will be held from the final amount due the Contractor, for this period will be one (1) year.