

SECTION 100

GENERAL PROVISIONS

SECTION 101 – FORM OF PROPOSAL AND SIGNATURE

The proposal must be made on forms provided for that purpose, or forms provided by the bidder which follow the same format, enclosed in a sealed envelope, and marked and addressed as required in the Advertisement. It must state the unit prices and the sum of money for which the bidder proposes to supply the materials and perform the work called for in the Proposal and Schedule of Work. Bidders shall submit a bid on a unit price basis for each item of work so listed in the proposal. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price bid for the item. If the bid is made by an individual, it must be signed with the full name of the bidder whose address must be given. If it is made by a firm, it must be signed in the co-partnership name by a member of the firm, and the name and address of each member of the firm must be given. If it is made by a corporation, it must be signed by an officer of the corporation in the corporate name and the corporate seal must be attached to such signature.

SECTION 102 – PROPOSALS

No bids received after the time set for the receipt of the proposals will be considered. The right is reserved to hold all bids for a period of thirty (30) days and to reject any or all bids. Bidders are invited to be present at the opening of proposals.

SECTION 103 – BIDDER'S BOND

Regardless of the amount of the project, each bid shall be accompanied by a bidder's bond in the amount of five percent (5%) of the amount of the bid meeting the requirements of Section 48-01.1-05 of the North Dakota Century Code as amended.

SECTION 104 – AWARDS AND CONTRACT SECURITY

The bidder to whom the award is made will be required to enter into a written contract with the CITY OF MANDAN as required by Section 48-01.1-05 of the North Dakota Century Code. Pursuant to NDCC Section 48-02-06.2, simultaneously with the CONTRACTOR's delivery of the executed contract, the CONTRACTOR shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the total contract amount as security for the faithful performance of the contract and also a payment bond in an amount not less than one hundred percent (100%) of the total contract amount as security for the payment of all persons performing labor on the project under the contract and furnishing materials in connection with the contract.

After the proposals are opened and read, the products of the quantities and the respective unit prices bid and the summation of said products in each proposal will be

verified or corrected. In case of discrepancy, the bidder's apparent intent indicated shall govern. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words. However, if the bidder's intent is not apparent, the proposal will be rejected. The verified or corrected totals of the proposals considered will be compared and the results of such comparison made public. Until the award of the contract, however, the right will be reserved to reject any and all proposals and to waive technicalities as may be deemed best for the interests of the CITY.

The award of the contract, if made, will be to the lowest responsible bidder whose proposal complies with all the requirements specified. The award, if made, will be made within the time specified in the Advertisement for Bids unless an extension of this limit is agreed to in writing by both parties. In the case of participation in the project by federal and/or state government, or any agency, subdivision, or other participating party, or if concurrence of the aforementioned parties is required by law, any award made by the Board of City Commissioners shall be deemed subject to concurrence of the participating and/or regulatory parties.

Within seven (7) days after the opening of the bids, the successful (or apparent low) bidder shall submit to the CITY ENGINEER a schedule of proposed progress showing the proposed starting and completion dates and with curves showing the percentage of the major features of the work scheduled for completion at any date together with a composite curve showing the percentage of the entire contract which will be completed at any date. See Standard Form Number 05-01 for a typical "Contract Progress Schedule." The CONTRACTOR may elect to use an approved substantially similar form.

The proposed progress schedule shall show the starting date and the number of working days deemed necessary by the CONTRACTOR to complete the work on or before the completion date shown in the proposal.

The number of working days shown on the progress schedule shall not exceed the number of calendar days, excluding Sundays and holidays, between the proposed starting date and the completion date shown in the proposal.

After the proposed progress schedule has been submitted to the CITY ENGINEER, it will be reviewed and submitted to the Board of City Commissioners with a recommendation on the award of the contract. By entering into a contract, the CONTRACTOR represents that it has carefully reviewed the plans, specifications, and general and special provisions and has inspected the site conditions and that it has the capability to complete a good and workmanlike project in conformance with the plans, specifications, and general and special provisions.

As provided by the North Dakota statutes, no contract will be awarded to any CONTRACTOR who is not the holder of a current license in the class within which the

value of the project falls. A foreign corporation must have a certificate of authority to do business in North Dakota before a contract can be awarded to said corporation.

The CITY OF MANDAN reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the CITY.

All bidder's bonds, except in case of defaults, will be returned upon request within a reasonable time and as provided by law.

SECTION 105 – ENGINEER

Where the word "ENGINEER" is used in the specifications or in the contract, it shall be and is mutually understood to refer to the CITY ENGINEER or an authorized representative of the CITY. The ENGINEER will give the grades and locations for all work, and no work depending upon such grades or locations shall be commenced until after the same have been established. Upon all questions concerning the interpretations of these specifications or the plans, the decision of the ENGINEER shall be binding upon both parties. Detailed plans of all work not completely shown on the plans now on file will be furnished by the ENGINEER from time to time, and the work shall be executed in accordance with such detailed plans.

SECTION 106 – CONTRACTOR

Where the word "CONTRACTOR" is used in the specifications or in the contract, it shall be and is mutually understood to refer to the party, firm, or corporation with whom the contract for the execution of the work is made, the agent of this party, or its legal representative. The Foreman of the CONTRACTOR in charge of the work will be held to represent the CONTRACTOR during the absence of the latter or CONTRACTOR's legal representative. Instructions given to the CONTRACTOR's Foreman on the work by the ENGINEER will be held as having been given to the CONTRACTOR.

SECTION 107 – CHARACTER OF WORKMEN

The CONTRACTOR shall remove from the project, when required to do so by the ENGINEER, any disorderly, dangerous, insubordinate, or incompetent person employed on the project. This person shall not return to the project without the written consent of the ENGINEER.

SECTION 108 – LOCAL CONDITIONS

Bidders shall satisfy themselves as to the nature of the material to be handled and the local site conditions affecting the work, and if conditions are found to be different than anticipated by the CONTRACTOR subsequent to the signing of the contract, it shall not in any way relieve the CONTRACTOR from its obligation or any risks from the fulfillment of all the work and terms of the contract.

SECTION 109 – METHODS AND APPLIANCES

The methods and appliances adopted by the CONTRACTOR shall be such as will enable the CONTRACTOR to secure a satisfactory quality of work and will enable the CONTRACTOR to complete the work within the time specified. The choice of methods and appliances to complete the work in compliance with the plans and specifications is solely the CONTRACTOR's. It is the responsibility and obligation to produce a complete project that fully complies with the plans and specifications and is of satisfactory quality. The ENGINEER may at any time inform the CONTRACTOR of apparent deficiencies in the work and the CONTRACTOR will make whatever adjustments are, in the CONTRACTOR's judgment, necessary to bring the work back into conformance. Failure of the ENGINEER to so advise the CONTRACTOR shall not in any way relieve the CONTRACTOR from its obligations which shall remain in full force and effect until the discharge of the contract. The Board of City Commissioners of the CITY OF MANDAN reserves the right, in case of improper construction, to suspend the work at any time and to relet the work or to order the reconstruction of any part or all of the work improperly done.

SECTION 110 – DELAYS

The CONTRACTOR will not be entitled to any compensation for causes resulting in delays or hindrances to the work. Extensions of time will be granted for unavoidable delays, which in the opinion of the ENGINEER are clearly beyond the control of the CONTRACTOR including, but not restricted to, acts of God or of the public enemy, acts of the Owner, acts of another CONTRACTOR in the performance of a contract with the Owner, fires, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather. The ENGINEER must receive a written request for time extension from the CONTRACTOR not more than twenty (20) days after commencement of delay before any time extension will be considered. Requests made beyond the twenty (20) day limit will be cause for denial. Any extension of time will not relieve the CONTRACTOR or its sureties from their obligations which shall remain in full force and effect until the satisfactory discharge of the contract.

SECTION 111 – DAMAGES

The CONTRACTOR will be held responsible and be required to make good, at CONTRACTOR's own expense, any and all damages to personal property caused by carelessness, neglect, or want of due precaution on the part of the CONTRACTOR, its agents, employees, or workmen.

SECTION 112 - UTILITIES

It shall be the responsibility of the CONTRACTOR to be familiar with the location of the existing sewer and water mains and service lines, oil pipelines, gas mains and service lines, telephone and communication lines, power, light and telephone poles and guys, steam lines, valve boxes and stop boxes, mail boxes, and all appurtenances pertaining to utility and public services. The CONTRACTOR shall notify all underground facility

operators at least forty-eight (48) hours in advance excluding Saturdays, Sunday, holidays and in accordance with N.D. Century Code Chapter 49-23 of any construction and consult with personnel of said utility companies regarding any changes or conflicts.

SECTION 113 – CHANGES

The Board of City Commissioners reserves the right to make any changes in the alignment, grade, or design as may be deemed advisable, and should any changes so made put the CONTRACTOR to extra expense or operate to decrease CONTRACTOR's expense, the ENGINEER shall make due allowance, which action shall be binding upon both parties. The CONTRACTOR with whom the contract for the execution of the work is made will be required to make any extension which the Board of City Commissioners may require. The extensions shall be constructed at the same unit price for the same class of work as bid upon for this work, provided that should the prices of materials be increased or diminished over the prices of the same materials at the present time for the same class of work, the ENGINEER shall make due allowance. The action shall be binding upon both parties and provided further that such extensions shall be ordered prior to the completion of this contract.

SECTION 114 - QUANTITIES

The quantities shown on the plan sheet or supplemental specifications entitled "Approximate Quantities" are estimated quantities based on information available at the time of design. It is mutually understood that these quantities may change at the time of construction due to unforeseen conditions which may be encountered during construction. The Board of City Commissioners reserves the right to designate the order in which the work shall be done as well as the location and the amount of work to be completed. Payment shall be made for the final amount of work completed at unit prices specified in the contract.

SECTION 115 – SUBCONTRACTING

All work performed under this contract shall be by the company or firm to which the contract is awarded and no portion of the work shall be awarded to a subcontractor unless authorized in writing by the ENGINEER acting on the approval of the Board of City Commissioners. The CONTRACTOR shall be responsible for the coordination and control of the subcontractor(s).

SECTION 116 – MONUMENTS, BENCH MARKS, WITNESS AND GRADE STAKES

All monuments, bench marks, witness and grade stakes are the property of the CITY, and in the event of the destruction or removal by the CONTRACTOR or any of CONTRACTOR's employees, such stakes shall be replaced by the ENGINEER at the CONTRACTOR's expense. Any interruption of work and/or costs incurred by the CONTRACTOR due to any delays caused during the replacement of destroyed monuments, bench marks, witness and grade stakes shall be borne by the

CONTRACTOR. The CONTRACTOR shall be responsible for notifying the project observer a minimum of 72 hours prior to the expected survey.

SECTION 117 – PATENTS

The CONTRACTOR will be held responsible and be required to make good at CONTRACTOR's own expense any and all damages and suits for damages caused by infringements of the patent rights on devices or equipment for the requirements of this contract and is to indemnify and bear harmless the CITY OF MANDAN from all claims, damages, or expenses by the use thereof. All fees and royalties covering the same are to be included in the price bid by the CONTRACTOR for the work to be done under the specifications.

SECTION 118 – ESTIMATES AND PAYMENTS

The ENGINEER shall make a monthly approximate measurement of the work done to date and an estimate of the value of the same at the prices agreed upon in the contract. When directed by the ENGINEER, the CONTRACTOR shall measure the work completed and submit to the ENGINEER in duplicate copy form an estimate of the work completed to date and value of same at the prices agreed upon in the contract.

The ENGINEER shall retain ten percent (10%) of the amount of each payment until fifty percent (50%) of all work in the Contract Documents has been completed and accepted by the ENGINEER. No further amount of retainage shall be withheld from payments after fifty percent (50%) of the contract has been completed unless the ENGINEER has on file any valid claims against the CONTRACTOR by the CITY OF MANDAN or others. The ENGINEER may reduce the amount retained upon completion of ninety-five percent (95%) of all work in the Contract Documents and accepted by the ENGINEER. On completion and acceptance of a part of the work on which the price is stated separately in the Contract Documents, payment in full may be made, including retained percentages less authorized deductions.

Payment for materials in storage may be added to any monthly estimate. The CONTRACTOR must submit the materials invoices, and the materials must be stored on CITY lands or right-of-way, at the site, or as directed by the ENGINEER to be eligible for payment. All materials not in storage as directed by the CITY shall be deducted from the material invoice. No retainage will be deducted for materials stored as directed by the CITY.

SECTION 119 – TIME OF BEGINNING AND COMPLETION OF WORK

The work on this contract shall be started on a date to be specified in the Advertisement for Bids or in a written order from the Board of City Commissioners and shall be completed on the date specified in the Advertisement for Bids. Work shall continue without interruption until the contract is completed except for weather conditions or at the discretion of the ENGINEER. The Board of City Commissioners reserves the right to

determine in what order the work shall be done, and the work shall be executed in accordance with such directions.

SECTION 120 – CONTRACTOR’S RESPONSIBILITIES

Unless otherwise specified, the CONTRACTOR shall furnish all labor, materials, and equipment necessary for the completion of the Schedule of Work in accordance with the plans and specifications. The CONTRACTOR shall do all necessary hauling and perform all labor, incidental thereto, for which no express provisions have been made. The CONTRACTOR shall assume all risks or damages to persons or property prior to the final acceptance of the work. The CONTRACTOR shall so conduct its operation as not to interfere with the work of other contractors in the vicinity. The CONTRACTOR shall maintain at all times an efficiently sized crew headed by a competent construction foreman and the necessary skilled labor to efficiently complete the work.

The CONTRACTOR shall be responsible for maintenance and operation of all constructed facilities until final acceptance unless otherwise noted in specifications, notes, or special provisions. This includes locating of CONTRACTOR constructed underground facilities.

SECTION 121 – FINISHING AND CLEANUP

From time to time or as may be ordered by the ENGINEER and immediately after completion of the work, the CONTRACTOR shall at its own expense clean up and remove all refuse and unused materials of any kind resulting from the work. Upon failure to do so within twenty-four (24) hours after request by the ENGINEER, the work may be done by the Owner and the cost thereof charged to the CONTRACTOR and deducted from CONTRACTOR's final estimate. All excavated areas along trails, sidewalks, curbs, and other structures shall be backfilled with earth, and the cost of such work shall be incidental to the item of construction.

SECTION 122 – WARRANTY

The CONTRACTOR shall guarantee all work and materials and guarantee the performance of the finished project free from material defect or failure for a period of one (1) year from the date of final payment, and the performance bond shall remain in full force and effect for the period. The CONTRACTOR shall provide this warranty regardless of whether the cause of a failure is known or attributable to the CONTRACTOR except for damage caused by a third party by no fault of the CONTRACTOR.

SECTION 123 – LIQUIDATED DAMAGES

OWNER and CONTRACTOR recognize that time is of the essence of the Agreement. They further recognize that not only will OWNER suffer financial loss if the work is not completed within the times specified in the contract, plus any extensions thereof allowed pursuant to the terms of the contract, but also the public of the City of Mandan will

suffer damages extremely difficult to estimate. Thus the parties recognize the delays, expense, and difficulties involved in proving the actual loss and damages suffered by the OWNER and by the public of the City of Mandan if any of the work is not completed on time. The parties further recognize the OWNER has made a reasonable endeavor to estimate the actual loss and damages which might be occasioned upon OWNER and the public of the City of Mandan in the event of delay of completion of any of the work and that CONTRACTOR was allowed input on this amount within five (5) days prior to the bid opening. Thus, both parties agree that the amounts of liquidated damages set forth herein to be assessed in the event of a delay in completion of any of the work are both reasonable in amount and reasonably related to the actual damages which the parties, through their reasonable endeavors, have estimated could occur upon delay in completion of any of the work. Accordingly, instead of requiring any actual proof of damages in the event that CONTRACTOR shall neglect, refuse, or fail to complete any work within the time specified in this contract, OWNER and CONTRACTOR agree that as liquidated damages for delay (and not as a penalty) CONTRACTOR shall pay OWNER the amount required in the schedule set forth in the project proposal, advertisement for bids, or special provisions for each day that expires after the time specified in the contract that any of the work is not complete unless extensions are allowed pursuant to the terms of the contract. Finally, OWNER and CONTRACTOR specifically recognize that the recitals in this paragraph are conclusive presumptions, pursuant to section 31-11-02 of the North Dakota Century Code. The decision of the ENGINEER for the non-completion of the work shall be binding upon both parties.

SECTION 124 – TRAFFIC CONTROL DEVICES

The CONTRACTOR is assumed to be familiar with all federal, state, and local laws, codes, ordinances, and regulations which in any manner effect those engaged in the work or the materials or equipment used in or upon the site, or in any way effect the conduct of the work. No pleas of misunderstanding or ignorance on the part of the CONTRACTOR will, in any way serve to modify the provisions of the contract. The CONTRACTOR shall provide and maintain on a twenty-four (24) hour basis all necessary safeguards and traffic control devices at its own expense.

The CITY OF MANDAN has adopted the U. S. Department of Transportation Manual on Uniform Traffic Control Devices, Part 6, 2003 Edition, or latest revision, for ~~all traffic control devices and their placement. For all materials and equipment used for traffic control on all construction projects in the CITY OF MANDAN, the CONTRACTOR shall comply with Section 704 of the Standard Specifications for Road and Bridge Construction and the Design Standard Drawings of the North Dakota Department of Transportation.~~ The ~~documents referred to above~~ are available at the CITY ENGINEERING Department.

When detours for roadway closures are not incorporated within the plans or are required because of an emergency situation, water main break, sewer collapse, etc., the CONTRACTOR shall submit a traffic control plan to the ENGINEER for review and approval.

SECTION 125 – TRANSPORTATION OF MATERIALS

The CONTRACTOR is authorized to ship all construction materials which are to be incorporated into the project to the CITY OF MANDAN in care of the CONTRACTOR. Such materials are exempt from the Federal Tax on transportation of said materials. The exemption of Federal Tax does not apply to shipments of fuel, lubricants, spare parts, and items of construction equipment belonging to the CONTRACTOR and which will not be incorporated in the construction project and which will not become the property of the CITY OF MANDAN. This authorization is granted with the distinct understanding that the CITY OF MANDAN will receive all benefits from the exemption from payment of the tax. The tax is not included in the CONTRACTOR's bid and also all transportation charges shall be paid by the CONTRACTOR.

SECTION 126 – EXTRA WORK

The CONTRACTOR shall perform extra work for which there is no price in the contract whenever it is deemed necessary or desirable in order to complete fully the work as contemplated. If the CONTRACTOR contends that additional compensation is due for work or material not clearly covered in the contract, the CONTRACTOR shall promptly notify the ENGINEER in writing of the intention to file a claim and the basis for additional compensation before beginning or continuing construction on the affected work. If the basis for the claim does not become apparent until after proceeding with the work and it is not feasible to stop the work, the CONTRACTOR shall immediately notify the ENGINEER that work is continuing and that written notification of the intent to file a claim will be submitted within ten (10) calendar days. The failure to give the required notification or to provide the ENGINEER proper facilities and assistance in keeping strict account of actual costs will constitute a waiver of the claim for additional compensation in connection with the work already performed. Notification of a claim, and the fact that the ENGINEER has kept account of the costs involved, shall not be construed as proving or substantiating the claim's validity. Such work shall be performed in accordance with the specifications. Work contained in the plans and specifications shall not be considered extra work and shall not be paid for by the CITY unless specifically agreed to in writing.

When work not shown on the plans is to be performed by the CONTRACTOR, the ENGINEER may order the work done on a force account basis when the measurement and payment becomes too cumbersome to be practicable, or when it is considered to be to the best interest of the CITY OF MANDAN. Extra work will be paid for at the unit price or lump sum stipulated in the order authorizing the work, or the CITY OF MANDAN may require the CONTRACTOR to do such work on a force account basis, to be compensated in the following manner:

(a) Labor. For all laborers (skilled & unskilled) and foremen in direct charge of the specific operations, the CONTRACTOR shall receive the rate of wage (or scale) agreed upon in writing before beginning work for each and every hour that said laborer and foreman are actually engaged in such work.

The wages of any foreman who is employed partly on the force account work and partly on other work will be prorated according to the number of workers in the two classes of work as shown by the payrolls.

The CONTRACTOR shall receive the actual costs paid to, or in behalf of, workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by a collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed on the work, but excepting any amounts which are already included in the wage rates paid. Any subsistence or travel allowance paid to the workmen shall be prorated according to the number of hours employed on the force account and other classes of work.

An amount equal to twenty percent (20%) of the sum of the above items will also be paid the CONTRACTOR.

(b) Bond, Insurance, and Tax. For premiums paid on additional bond, property damage, liability, and workmen's compensation insurance contributions, and social security taxes on the force account work, the CONTRACTOR shall receive the actual cost; to which cost six percent (6%) will be added. The CONTRACTOR shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax.

(c) Materials. For materials accepted by the ENGINEER and used, the CONTRACTOR shall receive the actual costs of such materials delivered on the work including transportation charges paid by the CONTRACTOR (exclusive of machinery rentals as hereinafter set forth), to which cost fifteen percent (15%) will be added plus any sales tax paid by the CONTRACTOR. For all materials used in connection with but not entering permanently into the work, reasonable depreciation will be allowed.

(d) Equipment. For the use of authorized equipment and additional traffic control devices required by the Force Account work, the CONTRACTOR will receive rental rates determined in accordance with the then current issue of the North Dakota Department of Transportation (N.D.D.O.T.) publication entitled EQUIPMENT RENTAL RATES FOR FORCE ACCOUNT WORK, which manual shall constitute a part of this specification. No percentage shall be added to these rates. No allowance will be allowed for equipment replacement or replacement escalators, cost of facilities capital, interest, small tools, or any other additives not listed. All equipment hours will be paid for as straight time. The only equipment payments that will be made are as follows:

(1) Owned Equipment. Payment for the actual hours of CONTRACTOR-owned equipment will be determined using the procedures outlined in the then current edition of the N.D.D.O.T. manual entitled "Rental Rates for Equipment and Traffic Control Devices."

The computed hourly equipment cost times the number of hours claimed shall not exceed the CONTRACTOR's actual purchase price for the piece of equipment being claimed.

Subcontractor-owned equipment will be paid for in the same manner as CONTRACTOR-owned equipment unless such equipment has been rented, leased, or hired by the CONTRACTOR, as provided for in (2) below.

(2) Leased, Rented, or Hired Equipment. Payment for leased, rented, or hired equipment shall be the actual invoice payment plus sales tax as verified by paid invoices signed by the lessor, or by checks issued by the CONTRACTOR. If the lease rental is weekly, the weekly rate shall be divided by 40 to get an hourly equipment cost for the claim. If the lease or rental is monthly, the monthly rate shall be divided by 176 to get an hourly equipment cost for the claim.

The computed hourly equipment cost, for each individual piece of equipment, times the number of hours claimed shall not exceed the CONTRACTOR's actual lease or rental cost for the time frame claimed.

(3) Idle Time. The number of hours of equipment use to be paid for will only be the hours that the equipment is operating on the claim item. No payment will be made for equipment on standby unless the standby is directed in writing by the ENGINEER, or the standby is proven to be as the direct result of the CITY's actions or inactions. Standby will be paid at 50 percent of the hourly bare rate calculated by dividing the monthly rate by 176. The listed weekly, daily, or hourly rates will not be used. Operating costs will not be paid for hours of idle time.

Payment for standby time will not be made on any day the equipment operates for 8 or more hours. For equipment accumulating less than 8 hours operating time on any normal work day, standby payment will be limited to only that number of hours which, when added to the operating time for that day equals 8 hours. Standby payment will not be made in any case on days not normally a workday.

The above rental rates to be paid on equipment will be on the size normally used to operate the equipment, subject to approval of the ENGINEER. The above rental rates include gas, oil, repairs, and any other incidentals necessary for the operation of the equipment but do not include the operators. No work will be paid for until unit prices, rental rates, and wages have been agreed upon in writing.

Procedures governing rented or owner-operated equipment, attachments and accessories, types and quantity of equipment, measurement of equipment time, use of equipment in excess of fifty (50) hours per week, standby time, and equipment transportation charges will be as set forth in the N.D.D.O.T. rental rate publication.

(e) Miscellaneous. No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

(f) Subcontracting. For any force account work performed by a subcontractor with the written authorization of the ENGINEER, the CONTRACTOR will receive an additional allowance for administrative and overhead expense. The additional allowance will be a percentage of the total force account invoice equal to ten percent (10%) of the first \$3,000 plus three percent (3%) of the balance in excess of \$3,000.

(g) Authority of Engineer. The ENGINEER has authority to require alterations in the equipment and labor force assigned to force account work, to limit authorization of overtime work to that normally used on the project for work of similar nature, or to require overtime when an emergency exists, and to require the cessation of force account work when adverse conditions severely limit productivity.

(h) Daily Records. The CONTRACTOR's representative and the ENGINEER shall compare records of the cost of work done as ordered on a force account basis at the end of each day for the purpose of resolving differences.

(i) Statements. No payment will be made for work performed on a force account basis until the CONTRACTOR has furnished the ENGINEER with duplicate itemized statements of the cost of such force account work detailed as follows:

1. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
3. Quantities of materials, prices, and extensions.
4. Transportation of materials.
5. Cost of property damage, liability and Workmen's Compensation Insurance premiums, Unemployment Insurance contributions, and Social Security Tax.

Statements shall be accompanied by receipted invoices for materials used including transportation charges paid by the CONTRACTOR. The statements shall be adjusted, when applicable, to reflect any discounts offered by the supplier. When materials used in the force account work are not specifically purchased for that work but are taken from the CONTRACTOR's stock, the CONTRACTOR shall furnish an affidavit certifying that such materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation costs claimed are the CONTRACTOR's actual costs.

On or before the tenth (10th) day succeeding the completion of the extra work authorized by a "Work Order," the CONTRACTOR shall present to the ENGINEER the original "Work Order" together with a full and complete itemized statement of such extra work, with date of completion of the work mentioned therein. Upon certification by the ENGINEER or his authorized representatives as to the correctness of such items with

regard to the amount and character of labor performed and materials furnished under such "Work Order," the ENGINEER shall enter the same as part of the estimate of the amount due the CONTRACTOR. The CONTRACTOR shall not be entitled to receive payment for any extra work in which he fails to present the "Work Order" within the time and in the manner hereinbefore mentioned.

The additional payment based on the percentages specified above shall constitute full compensation for all items of expense not specifically provided for the force account work. The total payment made as provided above shall constitute full compensation for such work.

SECTION 127 – FINAL PAYMENT

After the work has been completed, the ENGINEER will prepare a final statement showing the quantities of each and every item of work performed by the CONTRACTOR. All estimates upon which previous payments have been based are partial estimates and are subject to correction in the final statement. The final statement showing the entire quantity and value of each and every item of work performed will be submitted to the CONTRACTOR for its approval before being processed by the CITY for payment.

(a) Overpayment. If the final statement shows that the total of all partial payments made exceeds the total amount due to the CONTRACTOR, the CONTRACTOR shall promptly refund to the CITY the amount of such overpayment. If such refund is not made, the CITY shall have the right to deduct the amount thereof from any moneys due to the same CONTRACTOR under any other contract, either present or future.

SECTION 128 – CONTRACTOR'S INSURANCE

The CONTRACTOR shall not commence work under this contract until a "Certificate of Insurance" has been obtained and submitted to the CITY for all insurance required under this paragraph and proof of such insurance has been delivered to the CITY nor shall the CONTRACTOR allow any subcontractor to commence on any subcontract until all similar insurance required of the subcontractor has been obtained and proof has been delivered to the CITY.

(a) Compensation Insurance. The CONTRACTOR shall take out and maintain during the life of this contract Workers Compensation Insurance for all of CONTRACTOR's employees employed at the site of the project. In case any work is sublet, the CONTRACTOR shall require the subcontractor similarly to provide Workers Compensation Insurance for all of the latter's employed unless such employees are covered by the protection afforded by the CONTRACTOR. In the case of employees engaged in hazardous work under this contract, at the site of the project, who are not protected under the Workers Compensation Statute, the CONTRACTOR shall provide and shall cause each subcontractor to provide Employer's Liability Insurance for the protection of its employees not otherwise protected.

(b) Public Liability and Property Damage Insurance. The CONTRACTOR shall take out and maintain during the life of the Contract such Public Liability and Property Damage Insurance as shall protect him, the CITY, and any subcontractor performing work covered by this contract, for claims and damages for personal injury including accidental death and including the coverage for "Assault and Battery" as well as from claims for property damage (including damage to CITY's Property), which may arise from operations under this contract, whether such operations by himself or any subcontractor or by anyone directly employed by either of them to, from, or on the site and the amounts of such insurance shall be as follows:

Public Liability Insurance in an amount not less than \$1,000,000.00 for personal injuries, etc., including accidental death to any person, in an amount not less than \$2,000,000.00 on account of one accident and Property Damage Insurance not less than \$1,000,000.00. Where excavation, trenching, or tunneling is involved, the Property Damage Liability Coverage under the Comprehensive General Liability Policy shall specifically provide coverage for damage to underground property. The CITY OF MANDAN shall be named as an additional insured on all the policies required under this section.

(c) Satisfactory Coverage. In the event that the form of any policy or certificates or the amount of the insurance or the companies writing same are not satisfactory to the CITY, the CONTRACTOR shall obtain new policies or certificates in compliance with these specifications. The CONTRACTOR shall not cause any policies to be canceled or to permit them to lapse, and all insurance policies shall include a clause to the effect that the policy shall not be canceled or changed until thirty (30) days after the CITY has received written notice as evidenced by the return receipt of the registered letter.

(d) Proof of Insurance. "Certificates of Insurance" shall contain true transcripts from the policy, authenticated by the proper officer of the insurer, evidencing in particular those insured, the extent of the insurance, the locations and operations to which the insurance applies, the effective date and expiration date and the notice of cancellation clause mentioned herein above.

(e) Builder's Risk Insurance. The CONTRACTOR will maintain Builder's Risk Insurance or like insurance coverage (fire and extended coverage) on a one-hundred percent (100%) completed value basis on the insurable portion of the project for the benefit of the CITY, the CONTRACTOR, and all subcontractors, as their interest may appear.

SECTION 129 – OBSERVATION AND TESTING

All materials and equipment used in the construction of the Project shall be subject to adequate observation and testing in accordance with generally accepted standards.

The CONTRACTOR shall provide at its expense the necessary testing and inspection services required by the plans and specifications unless otherwise provided.

If the Plans and Specifications, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any work to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing, or approval.

Neither observations by the ENGINEER nor inspections, tests, or approvals by persons other than the CONTRACTOR shall relieve the CONTRACTOR from its obligations to perform the work in accordance with the requirements of the Plans and Specifications.

The ENGINEER and the representative of ENGINEER will at all times have access to the work. In addition, authorized representatives and agents of any participating federal or state agency shall be permitted to inspect or observe all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide facilities for such access and observation of the work and also for any inspection or testing thereof.

If any work is covered contrary to the request of the ENGINEER, it must at the ENGINEER's request, be uncovered for ENGINEER's observation and replaced at the CONTRACTOR's expense.

If any work has been covered which the ENGINEER has not specifically requested to observe prior to its being covered, or if the ENGINEER considers it necessary or advisable that covered work be inspected or tested by others, the CONTRACTOR at the ENGINEER's request will uncover, expose, or otherwise make available for observation, inspection, or testing as the ENGINEER may require, that portion of the work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such work is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction. If, however, such work is not found to be defective, the work will be under Section 126, extra work or an extension of the Contract Time or both directly attribute to such uncovering, exposure, observation, inspection, testing, and reconstruction and an appropriate work order shall be issued.

SECTION 130 – INDEMNITY AGREEMENT FOR CONTRACTORS

The CONTRACTOR agrees to indemnify and save harmless the CITY OF MANDAN, its appointed and elective officers and employees, from and against any and all loss or expense, including attorney's fees and costs by reason of liability imposed by law upon the CITY, its elected or appointed officials or employees for damages because of bodily injury including death at any time resulting therefrom sustained by any person or persons and on account of damage to property including loss of use thereof, arising out of or in consequence of the performance of this work, whether such injuries to persons or damage to property is due to the negligence of the CONTRACTOR, its agents or employees, its subcontractors, their employees, CITY OF MANDAN, its appointed or elected officers, employees, or their agents, except only such injury or damage as shall

have been occasioned by the sole negligence of the CITY, its appointed or elected officials or employees.

SECTION 131 – CONFORMITY WITH PLANS & SPECIFICATIONS

Unless specific tolerances are specified, all work performed and all materials furnished shall be in reasonably close conformity with the lines, grades, cross sections, dimensions, and material requirements, shown on the plans or indicated in the specifications.

Plan dimensions and contract specification values are to be considered as the target value to be strived for as the design value from which any deviations are allowed. It is the intent of the specifications that the materials and workmanship shall be uniform in character and shall conform as nearly as realistically possible to the prescribed target value or to the middle portion of the tolerance range. The purpose of the tolerance range is to accommodate occasional minor variations from the median zone that are unavoidable for practical reasons. When a maximum or minimum value is specified, the production and processing of the material and the performance of the work shall be so controlled that the material or work will not be preponderantly of borderline quality or dimension.

In the event the ENGINEER finds the materials or the finished product in which the materials are used are not within reasonably close conformity with the plans and specifications but that reasonably acceptable work has been produced, the ENGINEER will then make a determination if the work will be accepted and remain in place. In this event, the ENGINEER will document the basis of acceptance by contract modification which will provide for an appropriate adjustment in the contract price for such work or materials as the ENGINEER deems necessary to conform to a determination based upon 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.

SECTION 132 – SEVERAL CONTRACTS ON SAME SITE

When different types of construction work on the same section of public right-of-way or site are let under separate contracts, the several CONTRACTORS shall cooperate to the fullest extent with each other so that the prosecution of the work under each contract will be carried out for the best interests of the CITY. The CITY assumes no liability for any delay caused by any CONTRACTOR, its subcontractor(s) or supplier(s) to any other CONTRACTOR, its subcontractor(s) or supplier(s).

SECTION 133 – PROTECTION OF TREES

A CONTRACTOR working on public rights-of-ways or properties shall be responsible for the prevention of damage to trees, shrubs, bushes, hedges, or other woody plants located within or infringing on the public rights-of-ways and properties, including parks, and shall notify the City Forestry Department prior to beginning any construction near said trees.

The CONTRACTOR shall construct a fence or frame, not less than four (4) feet high, around the tree canopy (drip line) capable of preventing soil, building material, or debris from accumulating about the base of the plant which shall also be capable of serving as a barrier to all construction or public traffic. Materials or debris shall not be stored above the root zone of any tree which may impede the free passage of air, water, or nutrients except by written permission of the City Forester.

The CONTRACTOR shall exercise care in driving or working on the root zone area of trees to prevent excessive compaction of the soil. Gaseous, liquid, or solid substances which are harmful to plantings shall not come into contact with any plantings. Nails, bolts, or other fastening materials shall not be imbedded into the trunk or limbs of a tree. Ropes, wires, or other hanging materials shall not be attached to a plant in such a manner that the bark may be damaged or cause undue stress to the plant structure.

Any overhanging branches or underlying roots which may be crushed, scarred, broken, or damaged in any way due to unavoidable construction activity shall be reported to the City Forester so that preventive action may be taken to minimize damage to plants. Any trees damaged without prior notification of City Forester shall be the responsibility of the CONTRACTOR to repair or replace using a licensed tree service, upon determination by the City Forester.

If it is determined by the City Forester that ditches, tunnels, trenches, or other earthmoving operations for underground utilities construction will cause damage to the health, vigor, and stability of plants, the City Forester may require that power drive soil augers or the power push method be used wherever possible. Where this is not possible, the City Forester must be notified to assist in determining alternate methods. If trees must be pruned, fertilized, or removed prior to construction, as determined by the City Forester, all costs using prescribed methods shall be the responsibility of the CONTRACTOR.

Prior to backfilling any trench or ditch, the City Forester shall be notified to inspect any repairs made to damaged roots. All exposed roots shall be pruned or trimmed using a hand pruner or hand saw. Axe cuts will not be allowed.

Upon completion of construction, the CONTRACTOR shall notify the City Forester for a final inspection of the trees whether or not any damage occurred. Any damage found to have been the construction activity of the CONTRACTOR shall be the remedial responsibility of the CONTRACTOR to be corrected by a licensed tree service.

SECTION 134 – DEBARMENT CERTIFICATION

As required by Mandan City Ordinance, all suppliers, contractors, and service providers doing business with the city must certify that they are in compliance with all federal, state, and local laws, regulations, and orders including, but not limited to, those regarding non-discrimination, wages and hours, workers compensation, and immigration. Failure of compliance may result in the cancellation of any City contract and exclusion from consideration for future contracts.

By submission of a bid or proposal, the bidder or proposer certifies, to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense including, but not limited to, a violation of federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, immigration violations, or receiving stolen property in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract;
- (c) Are not presently indicted for or otherwise criminally or civilly charge by a governmental entity (federal, state, or local) with commission of any of the offenses listed in subparagraph (b) of this certification; and
- (d) Have not within a three-year period preceding this certification had one or more public contracts (federal, state, or local) terminated for cause or default.

The bidder or proposer also certifies that, if it later becomes aware of any information contradicting the statements above, it will provide that information to the city.

If the bidder or proposer is unable to certify to all statements in this certification, it shall indicate so in its bid or proposal, or in a transmittal letter or message accompanying its bid or proposal and provide a written explanation to the CITY.

SECTION 135 - SHOP DRAWINGS

Before any of the materials are delivered to the job, the CONTRACTOR shall submit to the CITY ENGINEER complete Shop Drawings.

The Shop Drawings shall include catalog numbers, performance data, dimensions, and other descriptive information.

The Shop Drawings may be in the form of printed catalog sheets showing all necessary information and shall be BOUND TOGETHER, NEATLY INDEXED AND TABBED.

Each Shop Drawing folder or set of drawings shall be STAMPED, INITIALED, AND DATED by CONTRACTOR to indicate they have thoroughly reviewed them.

The CITY review of Shop Drawings is for general compliance with contract documents. The CITY review does not relieve the CONTRACTOR from responsibility for errors, omissions, or deviations from contractor requirements.

Shop Drawings not in conformance with the Specifications may be returned to CONTRACTOR without review.

The CITY ENGINEER will retain two copies after review, and the balance will be returned to CONTRACTOR.