

## SECTION 200 – GENERAL CONDITIONS

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#### SECTION 201 – DEFINITIONS

- 1.01 The following are definitions found commonly in the City of Minot Standard Specifications:
- A. Contract Documents: The Contract consists of the following documents: The Advertisement, Information for Bidders, The General Conditions of the Contract, Special Conditions of the Contract, the Specifications and Drawings, Special Specifications, the Contract, including all additions, deletions and modifications incorporated therein before execution of the Contract.
  - B. Owner: The Owner is the City of Minot, North Dakota.
  - C. Engineer: Is the City Engineer of Minot, North Dakota, or his authorized representative.
  - D. Contractor: Is the Contractor named in the Contract Documents.
  - E. Proposal: Is the offer of a bidder to perform the work described in the Contract Documents when made out and submitted on the prescribed Proposal Form, properly signed and guaranteed.
  - F. Proposal Guaranty: Is the cashier's check and/or Bidder's Bond accompanying the Proposal submitted by the bidder, as a guaranty that the successful bidder will enter into a Contract with the Owner for construction of the work.
  - G. Contract: Is the agreement covering the performance of the work described in the Contract Documents including all supplemental agreements therein and all general and special provisions pertaining to the work and materials thereof.
  - H. Contractor's Bond: Is the approved form of security furnished by the Contractor and their Surety as a guaranty of good faith on the part of the Contractor to execute the work in accordance with the terms of the Contract.
  - I. Written Notice: Shall be considered as served when delivered in person, sent by registered mail, or by email to the Contractor at the address shown on the Contract or to the Superintendent required under Section 223.23.01 of these general conditions.

- J. Specifications: Shall mean the legal and procedural documents, General Conditions of the Contract, together with modifications thereof, and the Detailed Specification Requirements, with all addenda thereto.
- K. Drawings: Are all general and detailed official drawings or reproductions of drawings pertaining to the work or to any structure connected therewith, including such working plans as may be furnished or approved by the Engineer from time to time as the work progresses.
- L. ASTM: American Society for Testing Materials
- M. AASHTO: American Association of State Highway and Transportation Officials
- N. NDDOT: North Dakota Department of Transportation
- O. AWWA: American Water Works Association
- P. SDR: Standard Dimension Ratio
- Q. DR: Dimension Ratio
- R. ANSI: American National Standards Institute
- S. WW-P: Federal Specification Prefix
- T. NDDOT-SS: North Dakota Department of Transportation Standard Specifications for Road and Bridge Construction, 2008 Edition, As Revised.

## SECTION 202 – PRECONSTRUCTION CONFERENCE AND NOTICE TO PROCEED

- 2.01 Before the work can begin, a preconstruction conference must be held with the Engineer and Contractor. After the preconstruction conference is concluded, the notice to proceed can be given.
- 2.02 The mailing or delivery of a copy of the executed Contract to the Contractor or authorized agent constitutes the "Notice to Proceed". The Contractor shall begin and shall prosecute the work regularly and uninterruptedly thereafter (unless otherwise directed in writing by the Owner) with such force as to secure the completion of the work within the time stated in the Proposal.

## SECTION 203 – CONTRACTOR'S UNDERSTANDING

- 3.01 It is understood and agreed that the Contractor has by careful examination:

- A. Satisfied their self as to the nature of the work.
  - B. Conformation of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work.
  - C. The General and local conditions.
  - D. All other matters which can in any way affect the work under this Contract.
- 3.02 No verbal agreement with any officer, agent or employee of the Owner, either before or after the execution of the Contract, shall effect or modify any of the terms or obligations herein contained.

## SECTION 204 – INTENT OF DRAWINGS AND SPECIFICATIONS

- 4.01 The intent of the Drawings and Specifications is that the Contractor furnish all labor and materials, equipment and transportation necessary for the proper execution of the work unless specifically noted otherwise.
- 4.02 The Contractor shall do all the work shown on the Drawings and described in the Specifications and all incidental work considered necessary to complete the project in a substantial and acceptable manner, and to fully complete the work, ready for use, by the Owner.

## SECTION 205 – DRAWINGS AND SPECIFICATIONS

- 5.01 Copies of the drawings and specifications furnished: The Engineer will furnish to the Contractor, free of charge, four (4) copies of drawings and special Specifications reasonably necessary for execution of the work. All additional copies will be furnished at reproduction cost. This section does not pertain to copies of Standard Specifications, the cost of which is set forth in Section 117 of the Information for Bidders.
- 5.02 Discrepancies in Drawings: Any discrepancies found between the Drawings and Specifications and site conditions or any errors or omissions in the Drawings or Specifications shall be immediately reported to the Engineer, who shall promptly correct such error or omission in writing. Any work done by the Contractor after their discovery of such discrepancies, errors or omissions shall be done at the Contractor's risk.
- 5.03 Dimensions: Figured dimensions shall govern over scaled dimensions.
- 5.04 Drawings and Specifications at the Job Site: One complete set of all Drawings and Specifications shall be maintained at the job site and shall be available to the Engineer or his representative at all times.

## SECTION 206 – SHOP DRAWINGS

- 6.01 The Contractor shall provide shop drawings, settings, schedules, and such other drawings as may be necessary for the prosecution of the work in the shop and in the field as required by the Drawings, Specifications, or Engineer's instructions.
- 6.02 The Contractor shall submit for approval two (2) copies of all shop drawings and descriptive data as applicable showing all features not fully detailed on the Contract Plans but essential for a complete coordinated installation.
- 6.03 The approval of shop drawings indicates only that the type and kind of equipment, general method of construction and/or detailing is satisfactory but shall not be construed as a complete check. The responsibility rests on the Contractor for the proper dimensioning, detailing of connections, and incorporating into the work satisfactory material and equipment meeting the requirements of the Contract Plans and Specifications.

## SECTION 207 – SURVEYS

- 7.01 The Engineer shall establish all line and grade surveys necessary to provide cut/fill stakes at 25 foot intervals for curb and street grading, 50 foot intervals for sewer and water projects, and 100 foot intervals for wide-area grading projects. The Contractor shall transfer these grades and lines to the actual construction. More detailed surveying will be done at the contractor's expense.
- 7.02 The Contractor shall exercise proper care in the preservation of stakes set for his use by the Engineer. If such stakes are damaged, lost, or removed by the Contractor's operations, they shall be reset at his expense.
- 7.03 The Contractor shall protect from disturbance or damage all monuments and property markers until the Engineer has witnessed or otherwise referenced their locations and shall not remove them until directed.

## SECTION 208 – INSURANCE

- 8.01 The Contractor shall not commence work under this Contract until they have obtained the insurance required under this paragraph and filed with the City Auditor necessary insurance certificates and such insurance has been approved by the Owner. Nor shall the Contractor permit any sub-contractor to commence work on their sub-contract until the insurance required of the sub-contractor has been obtained and approved.
  - A. Workman's Compensation and Employer's Liability Insurance shall be secured and maintained as required by the State of North Dakota.

- B. Public Liability, Bodily Injury, and Property Damage: Injury of one or more persons, and/or property damage:
  - 1. Per Accident \$1,000,000.00
- C. Automobile and Truck Public Liability, Bodily Injury, and Property Damage: Injury of one or more persons, and/or property damage:
  - 1. Per Accident \$1,000,000.00

## SECTION 209 – PERMITS & LICENSING

- 9.01 All permits and licenses necessary for the prosecution of the work shall be secured and paid for by the Contractor. All contractors working within the City of Minot right-of-way must hold a valid license, issued by the City of Minot, for the work they are performing.

## SECTION 210 – LAWS TO BE OBSERVED

- 10.01 The Contractor shall give all notices and comply with all Federal, State, and local laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, the Contractor shall bear all costs arising there from.

## SECTION 211 – ROYALTIES AND PATENTS

- 11.01 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.
- 11.02 The Owner shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the process or article specified is an infringement on a patent, they shall be responsible for such loss unless they promptly give such information to the Engineer.

## SECTION 212 – INDEMNITY

- 12.01 The Contractor shall indemnify and save harmless the Owner from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recovered against employees, in the execution of the work or in the guarding of it.

## SECTION 213 – PROTECTION OF WORK

- 13.01 The Contractor shall, at their own expense, erect and maintain adequate sign, barricades, and warning lights and take all necessary precautions for the protection of the work and the safety of the public.
- 13.02 All barricades and obstructions shall be protected at night by signal lights which shall be kept burning from sunset to sunrise.
- 13.03 The Contractor will at all times until its completion and final acceptance protect his work, apparatus and material from accidental or other damage and shall make good any damages thus occurring, at their own expense.
- 13.04 The name and telephone number of the Contractor shall appear on all barricades set by them.

## SECTION 214 – PROTECTION OF EXISTING UTILITIES

- 14.01 The Contractor, prior to excavation, shall determine the location of all existing utilities within the work area and shall exercise all due caution to prevent damage thereto during all excavation or backfilling operations.
- 14.02 It shall be the Contractor's responsibility to locate with the aid of a City Inspector, all utility services before any construction.
- 14.03 Any utility damaged during construction shall be repaired by the Contractor at their expense. Existing manholes and gate valves shown on the drawings are to be used by the Contractor as general information only and are not to be construed, in any way, as relieving the Contractor of any responsibilities outlined in this Section.

## SECTION 215 – PUBLIC SAFETY AND CONVEINIENCE

- 15.01 The Contractor shall at all times so conduct their work as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to insure the protection of persons and property in a manner satisfactory to the City Engineer.
- 15.02 No road or street shall be closed to the public except with the permission of the City Engineer.
- 15.03 Fire hydrants on or adjacent to the work shall be kept accessible to the firefighting equipment at all times.

- 15.04 Temporary provisions shall be made by the Contractor to insure the use of sidewalks and the proper functioning of all gutters, storm sewer inlets, and drainage ditches, which shall not be obstructed except as approved by the City Engineer.

## SECTION 216 – ACCIDENTS

- 16.01 The Contractor shall provide, at the site, such equipment and medical facilities as are necessary to supply first-aid service to anyone who may be injured in connection with the work.
- 16.02 The Contractor must promptly report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the work; which caused death, personal injury, or property damages, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Engineer and the Owner.

## SECTION 217 – ASSIGNMENT OF CONTRACT

- 17.01 The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of their right, title or interest therein, or their obligation there under, without written consent of the Owner.

## SECTION 218 – SUB-CONTRACTS

- 18.01 At the time specified by the Engineer, the Contractor shall submit in writing to the Owner for approval of the Engineer the names of any sub-contractors proposed for the work. Sub-contractors may not be changed except at the request or with the approval of the Engineer.
- 18.02 The Contractor shall remain responsible to the Owner for the acts and omissions of their sub-contractors. The Contract Documents shall not be construed as creating any contractual relation between any sub-contractor and the Owner. The Contractor shall bind every sub-contractor by the terms of the Contract Documents.

## SECTION 219 – CONTRACTOR'S RESPONSIBILITY

- 19.01 The Contractor shall have charge of and be responsible for the entire work under this Contract until the completion, and any imperfect or unfaithful work which may be discovered any time before the final acceptance of work embraced in this Contract shall be corrected immediately upon request of the Owner or Engineer.
- 19.02 The Contractor shall maintain a work force on site each workday, except during inclement weather, during the Contract period until the project is completed. Any work days not worked will be taken into account on any Request for Extension of Time for Completion and/or assessment of liquidated damages.

## SECTION 220 – RIGHTS OF VARIOUS INTERESTS

- 20.01 Wherever work being done by the Owner's employees or by other contractors is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Engineer, to secure the completion of the various portions of the work in general harmony.

## SECTION 221 – ENGINEER'S RESPONSIBILITY AND AUTHORITY

- 21.01 The Engineer will require, on the Owner's behalf, that the construction be performed by the Contractor in accordance with the Plans and Specifications.
- 21.02 The Engineer shall also have authority on behalf of the Owner to require the proper prosecution of the installation of the work to the extent that the forces of labor may be increased or decreased by his order to insure the execution of the Contract in the time and manner prescribed.
- 21.03 The Engineer, shall, within a reasonable time after presentation, make decisions in writing on any claims between the Contractor and Owner; such decisions shall be regarded as final.

## SECTION 222 – INSPECTION OF WORK

- 22.01 Inspectors may be stationed on the work to report to the Engineer as to the progress of the work, the manner in which it is being performed, and also to report whenever it appears that materials furnished and work performed by the Contractor fail to fulfill the requirements of the Specification and Contract.
- 22.02 The Inspector may direct the attention of the Contractor to such failure or infringement but such inspection shall not relieve the Contractor from any obligations to furnish acceptable materials or to provide completed construction that is satisfactory in every particular.

- 22.03 In case of any dispute arising between the Inspector and the Contractor as to material furnished or the manner of performing the work, the Inspector shall have the authority to reject materials, and/or suspend the work until the questions and issue can be referred to and decided by the Engineer.
- 22.04 Inspectors are not authorized to revoke, alter, enlarge, relay, or release any requirements of these specifications, or to issue instructions contrary to the plans and specifications. Inspectors shall in no case act as management of the work by the Contractor.

## SECTION 223 – CONTRACTOR’S EMPLOYEES

- 23.01 Contractors Superintendent: A qualified superintendent, who is acceptable to the Engineer, shall be maintained on the work and give efficient supervision to the work until its completion. The superintendent shall have full authority to act in behalf of the Contractor, and all directions given to the superintendent shall be considered given to the Contractor. The Contractor shall remove from the project any superintendent unsatisfactory to the Engineer.
- 23.02 Character of Workmen: Any foreman or workman employed by the Contractor, who in the opinion of the Engineer, does not perform their work in a skillful manner, or appears to be incompetent or incorrigible shall be dismissed by the Contractor or their representatives when requested by the Engineer, and such persons shall not again be permitted to return to the work without the written consent of the Engineer.

## SECTION 224 – MATERIALS, SERVICES, AND FACILITIES

- 24.01 It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, mechanics for labor, tools, equipment, equipment rental, water, light, power, transportation, superintendent, temporary construction of every nature whatsoever necessary to execute complete and deliver the work within the specified time.

## SECTION 225 – WORKMANSHIP AND MATERIALS

- 25.01 All work done and all materials and equipment furnished by the Contractor shall strictly conform to the plans and specifications. Competent labor, mechanics, and tradesmen shall be used on all work.
- 25.02 The acceptance at any time of the materials by or in behalf of the Owner shall not be a bar to future rejection if they are subsequently found to be defective or inferior in quality or uniformity of the material specified.

- 25.03 Whenever any material shall be condemned by the Engineer such material shall be removed at once from the line of work at the Contractor's expense, and shall not be brought back.

## SECTION 226 – INSPECTION AND TESTING OF MATERIALS

- 26.01 During the progress of the work, it shall be subject to the inspection of the Engineer, and the Contractor shall afford every reasonable facility and assistance to the Engineer to make such inspection thorough and intelligent.
- 26.02 The fact that the Engineer is at the job site shall not be taken as an acceptance of the Contractor's work or any part of it. The Contractor shall notify the Engineer upon completion of their Contract and the work shall be given final inspection and test by the Engineer and if all parts of the work are acceptable and comply with the intent of the Plans and Specifications, a recommendation of final acceptance will be made by the Engineer to the Owner.
- 26.03 Contractor shall submit to the Engineer from time to time or when called upon to do so, and without charge, samples or specifications of materials they propose to use.
- 26.04 For projects under the control of the City of Minot, the City shall call and pay for all materials testing, including locally supplied materials and on site tests such as density tests for soil and bituminous paving. Exceptions to this general condition shall include material certifications and tests provided by non-local suppliers, job mix formulas required for paving mixes and performance tests of certain materials in place such as watermain and sewermain pressure tests. Any re-tests required due to test failures shall be paid for by the contractor. The testing laboratory will be selected by the Engineer and all tests shall be in accordance with the standards of the ASTM, AASHTO, and other recognized standards.
- 26.05 For all work covered by the City of Minot Standard Specification and Details and done in the right of way or public easement, the engineer or their qualified representative must be present at all times to observe and inspect the work. Failure by the engineer to be present at all times will be cause for the City of Minot to stop the work until a qualified representative is present or can be cause for the City of Minot to reject the work.

## SECTION 227 – CONFORMITY WITH PLANS AND SPECIFICATIONS

- 27.01 All materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Engineer, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected. Any defective work whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause shall be removed within ten (10) days after written notice is given by the Engineer, and the work shall be re-executed by the Contractor. The fact that the Engineer may have previously overlooked such defective work shall not constitute an acceptance of any part of it.
- 27.02 In the event the Engineer finds the materials furnished, work performed, or the finished product not in conformity with the plans and/or specifications but that the portion of the work affected will, in his opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, he will advise the Owner (Minot City Council) of his determination that the affected work be accepted and remain in place. In this event, the Engineer will document his determination and recommend to the Owner a basis of acceptance which will provide for an adjustment in the contract price for the affected portion of the work. The Engineer's determination and recommended contract price adjustments will be based on good engineering judgment and such tests or retests of the affected work as are, in his opinion, needed.
- 27.03 The acceptance by the Owner of the Engineer's recommendation with respect to the adjustment in the Contract price shall constitute final determination of said adjustment. Thereafter, the changes in contract price shall be covered by contract modifications (change order or supplemental agreement) as applicable.

## SECTION 228 – SUSPENSION OF WORK

- 28.01 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, or such other conditions as are considered unfavorable for prosecution of work, or failure on the part of the contractor to carry out the provisions of the Contract or to supply materials meeting the requirements of the Specifications. The Contractor shall not suspend operation without the Engineer's permission.

## SECTION 229 – OWNER'S RIGHT TO CORRECT DEFICIENCIES

29.01 If the Contractor shall neglect to prosecute the work properly or fail to perform any provision of this Contract, the Owner, after three (3) days written notice to the Contractor may, without prejudice to any other remedy he may have, correct such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

## SECTION 230 – OWNER’S RIGHT TO TERMINATE CONTRACT

- 30.01 The Owner shall have the right to terminate the employment of the Contractor after giving seven (7) days written notice of termination to the Contractor in the event of any default by the Contractor and upon receiving written notice from the Engineer certifying cause for such action.
- 30.02 In the event of such termination the Owner may take possession of the work and of all materials, tools, and equipment thereon and may finish the work by whatever method and means he may select.
- 30.03 In such a case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner.
- 30.04 It shall be considered default by the Contractor whenever they shall:
- A. Undergo voluntary or involuntary bankruptcy, become insolvent, or assign his assets for the benefit of his creditor.
  - B. Disregard or violate important provisions of the Contract Documents or Engineer’s instructions, or fail to prosecute the work according to the agreed schedule of completion, including extensions thereof.
  - C. Fail to provide a qualified superintendent, competent workmen or subcontractors, or proper materials, or fail to make prompt payment therefore.

## SECTION 231 – REMOVAL OF EQUIPMENT

31.01 At the termination of this Contract, or in the case of annulment of the Contract before completion, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of their equipment and supplies from the property of the Owner.

- 31.02 Should the Contractor fail to remove such equipment and supplies the Owner shall have the right to remove them at the Contractor's expense.

## SECTION 232 – CHANGES IN THE WORK

- 32.01 The Owner may, as the need arises, order changes in the work through additions, deletions, or modifications without invalidating the Contract.
- 32.02 Compensation and time of completion affected by the changes shall be adjusted at the time of ordering such changes. The value of such changes shall be determined by unit prices named in the Contract.

## SECTION 233 – EXTRA WORK: CHANGE ORDER AND FORCE ACCOUNT

- 33.01 If any work should be required for which no unit price for the supplying of material or the performance of such work is provided in the proposal, it shall be classified as Extra Work. However, it is specifically understood that if no bid items for the removal and replacement of paving, concrete, sod, or any other ground surface improvements are included in the Proposal, all such items disturbed shall be removed and replaced in original condition or better as non-pay items.
- 33.02 Written Change Order: For any extra work required, the Engineer for the Owner and the Contractor shall first attempt to negotiate a price by written change order. Consulting engineers hired by the Owner for any projects covered by these Standard Specifications shall be required to obtain approvals for any extra work as set forth hereinafter.
- A. The Engineer shall determine any and all quantities of materials necessary to accomplish the extra work.
  - B. The Contractor shall provide to the Engineer written quotes from suppliers for the price of the materials, an estimate of man-hours needed to perform the work together with wage and employee benefits information, and an estimate of hours for equipment to be used with rates to be charged for such equipment. The Contractor will be allowed to add 15 Percent to the total cost of the previous items.
  - C. The Engineer and Contractor shall then negotiate a change order price and the written change order shall be prepared by the Engineer. If the price negotiated and agreed upon exceeds \$10,000 or 10% of the original contract amount, whichever is greater, the change order must be approved by the City Engineer and the City Manager. The City Manager shall notify the City Council regarding the change order within 24 hours of its approval.

- D. No extra work covered by any change order shall be done by the Contractor without a valid change order. However, the Contractor may be allowed to proceed with extra work without formal change order approval if, in the opinion of the Engineer, the immediate commencement of the extra work will relieve a situation of hazard, or substantial inconvenience to the public. A change order (or force account agreement) shall be prepared thereafter.
- 33.03 If the Owner and the Contractor cannot agree to a price for extra work pursuant to the methods set forth hereinbefore, the extra work shall be done by force account. However, the final amount paid for extra work by force account shall not exceed the lowest price offered by the contractor in the change order process.
- 33.04 Extra work by force account shall not proceed without written approval from the City Engineer of the City of Minot. Extra work done by force account shall be handled and compensated in the following manner:
- A. Labor: For all laborers and supervisors in the direct charge of the specific operations, the Contractor will receive the wage paid for each hour the laborers and the supervisor are actually engaged in the Force Account Work, but not to exceed any rate of wage agreed to before beginning the work.
    - 1. The Contractor will receive actual costs paid to or on behalf of the workers for subsistence and travel allowance, health and welfare benefits, pension fund, or other fringe benefits when such amounts are required by collective bargaining agreement or employment contract generally applicable to the classes of labor employed in work, but excepting any amounts already included in wage rates paid. Any subsistence or travel allowance paid to workers shall be prorated according to the number of hours employed on the Force Account and other classes of work.
    - 2. The Contractor will be paid an amount equal to 15 Percent of the sum of the above items for overhead and profit.
  - B. Bond, Insurance, and Taxes: For premiums paid on additional bond, property damage, liability, workmen's compensation, and unemployment insurance, and for social security taxes on the Force Account wages, the Contractor will receive the actual cost, to which the sum of 6% will be added. The Contractor shall furnish satisfactory evidence of the premium rates.

- C. Materials: For all materials accepted by the Engineer and permanently installed into the work, the Contractor will receive the actual cost (including transportation charges paid by the Contractor) of the material delivered, to which a sum equal to 15% will be added. For materials used in connection with (but not entered permanently into) the work, a reasonable depreciation will be allowed.
- D. Equipment: If the Engineer and Contractor cannot agree on equipment rates for force account work, the following method of determining equipment rates shall be used. For use of authorized equipment and additional traffic control devices required by the Force Account Work, the Contractor will receive rental rates determined according to the then current issue of the North Dakota Department of Transportation publication entitled "Rental Rates for Equipment and Traffic Control Devices". This manual shall constitute a part of this Specification. No percentage will be added to these rates.
  - 1. 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 50 hours per week, stand-by time, and equipment charges will be set forth in the NDDOT publication "Rental Rates for Equipment and Traffic Control Devices".
- E. Miscellaneous: No additional allowance will be made for use of small tools not listed in the rental rate schedule or other costs for which no specific allowance has been provided.
- F. Subcontracting: For any Force Account or Extra 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 or Extra Work invoice equal to 10 Percent.
- G. Authority of the Engineer: The Engineer has authority to require alterations in equipment and labor force assigned to Force Account Work. The Engineer is also authorized to limit 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 stopping of Force Account Work when adverse conditions severely limit productivity.
- H. Daily Records: Each day the Contractor's representative and the Engineer shall compare and reconcile the records of labor, materials, and equipment used in the Force Account Work.

I. Statements: The Contractor shall furnish the Engineer with duplicate itemized statements of the cost for the Force Account Work, detailed as follows:

1. Payroll for laborers and foreman.
2. Quantities of materials, prices, extensions, and transportation costs paid by the Contractor.

Statements shall be accompanied by receipted invoices for materials used, including transportation charges by the Contractor. The statements shall be adjusted when applicable to reflect any discounts offered by the supplier.

If materials used in the Force Account Work are not specifically purchased 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 invoices.

The Engineer will prepare a summary statement of the Force Account Work which will be submitted to the Contractor for verification and signature. The value of the Force Account Work covered by approved statements will be included in progressive pay estimates.

J. Compensation: Compensation provided by previous provisions of this Section shall be accepted by the Contractor as payment in full for Extra Work performed on a Force Account basis.

K. Specialty Work: When the Engineer and Contractor determine a special service or item of work cannot be performed by the Contractor or authorized Subcontractors, the service or Extra Work item may be performed by a specialist.

1. Invoices for such work on the basis of current market price may be accepted without complete itemization of labor, material, and equipment cost when it is not practicable and not according to established practice of the special service industry to provide such complete itemization. To compensate the Contractor for administrative and overhead costs, an allowance will be added to the specialty work invoice equal to 10%.

L. Formal Audit: The Owner has the right to audit the Contractor's record with respect to extra work done by change order or force account.

## SECTION 234 – OPERATIONS AND STORAGE AREAS

- 34.01 All operations of the Contractor, including storage of materials, shall be confined to areas authorized by the Owner. Any additional land and access thereto not shown on the drawings that may be required for temporary construction facilities or for storage of materials shall be provided by the Contractor with no liability to the Owner.

#### SECTION 235 – SCHEDULE OF COMPLETION

- 35.01 The Contractor shall submit at a reasonable time, as requested by the Engineer, schedules which shall show the order in which the Contractor proposes to carry on the work, with dates at which the Contractor will start the several parts of the work and estimated dates of completion of the several parts. The Contract may specify that certain segments of the Contract must be completed before other segments are commenced by the Contractor. In this case, interim completion dates may be applied and liquidated damages enforced on segments not completed as required.

#### SECTION 236 – ORDER OF CONSTRUCTION

- 36.01 The Engineer shall have control of the order in which the various parts of the construction work are to be performed. The order of work as determined by the Contractor will be followed except where the Engineer determines that such order would not be to the best interest of the Owner or the general public.

#### SECTION 237 – EXTENSION OF CONTRACT TIME

- 37.01 A delay beyond the Contractor's control occasioned by an Act of God, or Act or omission on the part of the Owner or by strikes, lockouts, fire, ect., may entitle the Contractor to an extension of time in which to complete the work as determined by the Engineer; provided, however, that the Contractor shall immediately give written notice to the Engineer of the cause of such delay.
- 37.02 Delay in material shipping shall not be sufficient reason for an extension unless so determined by the Engineer. The granting of any extension of time shall not be the basis for any claim for extra costs incurred by the Contractor.

#### SECTION 238 – USE OF COMPLETED PORTIONS

38.01 The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work of such portions may not have expired; but such taking shall not relieve the Contractor of their responsibility to complete the project in accordance with the Contract Documents. If such prior use increases the cost of or delays the completion of uncompleted work or causes refinishing of completed work, the Contractor shall be entitled to such extra compensation, or extension of time or both, as the Engineer may determine.

#### SECTION 239 – PROTECTION OF PROPERTY

39.01 The Contractor shall, at their own expense, protect by falsework, braces, shoring or other effective means, all buildings, walls, fences, and other property along their line of work or affected directly by their work, against all damage and shall repair or repay the injured owners for such damage.

#### SECTION 240 – CORRECTIONS OF WORK BEFORE FINAL PAYMENT

40.01 The Contractor shall promptly remove from the premises all materials condemned by the Engineer as failing to conform to the Contract, whether incorporated in the Work or not, and the Contractor shall promptly replace and re-execute their own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of the Contractor destroyed or damaged by such removal or replacement.

#### SECTION 241 – DEDUCTION FOR UNCORRECTED WORK

41.01 If the Engineer deems it inexpedient to correct work injured or not in accordance with the Contract, an equitable deduction from the contract price shall be made therefore.

#### SECTION 242 – FINAL ACCEPTANCE OF THE WORK

42.01 Before any work is considered final and ready for acceptance by the City of Minot; the Contractor, Consultant Engineer (if applicable), and the City's representative shall perform a project walkthrough.

- 42.02 Any deficiencies in work will be documented by the Engineer or City and will be corrected before the warrantee period will be allowed to begin. Once the deficiencies are corrected, the City will be notified and asked to complete a final project walkthrough with the Contractor. If no other issues are found, the Work shall be considered final, the two year warrantee period will begin, and the work shall become the maintenance responsibility of the City of Minot.

## SECTOIN 243 – WORK IN FREEZING WEATHER

- 43.01 Work may not continue in freezing weather, unless specifically authorized in writing by the Engineer.

## SECTION 244 – CLEANING UP

- 44.01 The Contractor must keep all streets, alleys, and sidewalks as free from material and debris as the character or the Work will permit, and upon completion of any part of the Work, must within reasonable time, remove all surplus materials and debris, and leave right-of-way in acceptable conditions.
- 44.02 Failure to comply with this provision after due and proper notice has been given by the Owner, will be sufficient grounds for the Owner to proceed to clean up such material and debris and make such repairs, charging the same to the Contractor, who hereby agrees to the provisions as above set forth.

## SECTION 245 – RELEASE OF LIENS

- 45.01 If required, the Contractor shall deliver to the Owner a complete release of all liens arising out of this Contract before the retained percentages or before the final payment is paid. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner such amounts as the Owner may have been compelled to pay in discharging such liens including all costs and a reasonable attorney's fee.

## SECTION 246 – PROGRESS PAYMENTS

- 46.01 So long as the work herein contracted for is carried on in accordance with the provisions of the Contract, the Engineer will, on or before the first day of each month, make an approximate estimate of the value of the work performed during the previous month. Progress payments in the amount of 90 Percent of the estimate will be made to the Contractor in cash within approximately thirty (30) days after preparation of the partial estimate by the Engineer and approval of the same by the Owner. The Owner may at times reserve and retain out of said payments all sums it may be authorized to reserve or retain.
- 46.02 The amount retained will be reduced to 5 Percent after completion of 50 Percent of the project and to 1 Percent after substantial completion of the project if the Engineer finds that progress is satisfactory and that final completion will not be jeopardized by such reduction.
- 46.03 For each progress payment, an additional \$1,000 shall be retained by the City until it has been determined by the State Commissioner of Labor that no action or fines are pending against the Contractor under the provisions of NDCC 43-07-20.

#### SECTION 247 – MEASUREMENT OF QUANTITIES

- 47.01 The quantities of work performed will be computed by the Engineer on the basis of measurements taken by the Engineer, or authorized representative, and these measurements shall be final and binding.
- 47.02 All work computed under the Contract shall be measured by the Engineer according to the United States Standard Measurements and Weights. Measurements for various items will be made as provided in the specifications.

#### SECTION 248 – FINAL PAYMENT

- 48.01 The Engineer will, as soon as practicable after the completion and final acceptance of the Work, make a final estimate of the amount of work done under the Contract. This estimate shall be based on as-built measurements made by the Engineer, and based on unit prices in the Proposal plus all approved additions less all approved deductions and less previous payments made.

#### SECTION 249 – GUARANTEE

- 49.01 The Contractor guarantees all work constructed under the Contract for a period of two (2) years from the date of final acceptance against defects in material or workmanship. The Contractor shall bear the entire cost and expense of all repairs which may, from any imperfection in work or materials become necessary within that time.

- 49.02 If at any time within the period of guarantee, any of the work included in the guarantee shall, in the judgment of the Engineer, require any repair or reconstruction, he shall notify the Contractor to make the repairs required. Upon receipt of the notice, the Contractor shall proceed with such repairs and shall complete the same within a reasonable time.
- 49.03 If the Contractor shall neglect or fail to proceed with the repairs within twenty (20) days or if, in the opinion of the Engineer, the repairs do not admit of sufficient delay to issue said notice and to await the action of the Contractor, then the Owner shall have the right to cause such repairs to be made and the cost shall be paid by the Contractor. The liability of the bond given to secure the faithful performance of the Contract shall continue during the full guarantee period.
- 49.04 At the expiration of the guarantee period, the Contractor and their surety shall be released from further obligation under this Contract, providing the Engineer will certify to the Owner that the work performed under this Contract is in good and proper condition at the time.

## SECTION 250 – SAFETY

- 50.01 The Contractor and sub-contractors shall perform the work in compliance with the latest North Dakota Safety Code adopted by the North Dakota Workman's Compensation Bureau.
- 50.02 Safety apparel meeting the ANSI/ISEA 107-2004, as Revised, Standard for High Visibility Safety Apparel and Headwear, shall be worn when working in the right-of-way.

## SECTION 251 – TRAFFIC SIGNING REQUIREMENTS

- 51.01 The Contractor shall provide for all required traffic control devices as shown on the Traffic Control Plan included with the Plans. All equipment and devices must be in place before any work commences in the area affected by the Traffic Control Plan.
- 51.02 If no Traffic Control Plan is included with the Plans, the Contractor shall prepare and submit a Traffic Control Plan to the Engineer at least one week prior to commencement of work. The City of Minot Traffic Division may be available to the Contractor to determine signing requirements. However, any assistance provided by the Traffic Division shall in no way relieve the Contractor of their responsibility to provide proper traffic control pursuant to the Manual on Uniform Traffic Control Devices, part VI, US Department of Transportation, Federal Highway Administration, 2003, as revised or as adopted.

51.03 Existing signs of any type that interfere with construction shall be removed and replaced in the same location by the Contractor, at no cost to the Owner, unless otherwise noted.

## SECTION 252 – DISCOVERY OF CULTURAL AND ENVIRONMENTAL ITEMS

52.01 In the event of a cultural or threatened/endangered species find during any phase of construction, the following procedure will be followed:

- A. Construction shall be halted immediately, with as little disruption to the find as possible and works shall not resume in the vicinity until approved by the Engineer.
- B. The Contractor shall notify the Owner, who shall contact the State Historical Preservation Officer.
- C. The State Historic Preservation Officer may decide to have an archaeologist inspect the site and make recommendations about the steps needed to protect the site, before construction is resumed.
- D. Any claim made by the Contractor for down time or additional work required by the State Historic Preservation Officer shall be classified as extra work. See Section 233 – Extra Work
- E. Should any artifacts, housing sites, ect, be uncovered, the same procedure shall be followed as outlined for an archaeological find.
- F. Failure to notify the Engineer within 24 hours shall result in the Contractor being liable for all stand-by costs, all damage incurred, and all other associated costs.

## SECTION 253 – SUBSTITUTE AND (OR EQUAL) PROVISIONS

- 53.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those substitute or "or-equal" materials and equipment approved by the Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents established a standard of required type, function, and quality to be met by any proposed substitute or "or-equal" item. No item of material or equipment will be considered by Engineer as a substitute or "or equal" item unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approved any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.
- 53.02 The following procedure shall be followed to determine the equivalency of any material that is not directly referred to in these specifications:
- A. The Contractor shall submit a sample of the proposed product, with all the available literature, to the Engineer.
  - B. The Engineer will determine equivalency of the proposed product.
  - C. The decision of the Engineer as to equivalency of the proposed product shall be final.
- 53.03 Any variation in the design concept of the proposed product, as compared to listed products, shall be grounds for rejection.
- 53.04 Availability of parts, costs of parts, and work involved in replacing said parts, can also be used by the Engineer in making his decision as to equivalency.

## SECTION 254 – NORTH DAKOTA PREFERENCE

- 54.01 Unless prohibited by federal law or regulation, and except for those projects being funded by federal aid funds, the Contractor must give preference to the employment of bona fide North Dakota residents, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, who are deemed to be qualified in the performance of the work to be performed by the Contractor. (See NDCC Chapter 43-07 for further requirements).

## SECTION 255 – SPECIAL TESTING REQUIREMENTS

- 55.01 On all projects not under direct supervision of the City of Minot Engineering Department, the tests detailed in Section 600 – Project Testing Requirements must be taken by an independent qualified person or agency and certified copies of the results must be submitted to the City Engineer.
- 55.02 The specific testing requirements are listed in each relevant specification section or are outlined in Section 600 – Project Testing Requirements.

## SECTION 256 – CITY DATUM

- 56.01 The City of Minot requires all projects constructed in the City right-of-way to use the National Geodetic Vertical Datum of 1929 (NGVD29).
- 56.02 All plans and specifications for work within the City right-of-way must have the NGVD29 datum printed on the Plan and referenced in the Specification.

## SECTION 257 – SUBDIVISION MAINTENANCE AND ESCROW

- 57.01 The developer of all commercial, industrial, and residential subdivisions within the City of Minot shall be responsible for maintenance responsibilities for the sanitary sewer, storm sewer, water system, and roadway section. Maintenance responsibilities of the developer shall include snow clearing when the street section is not fully improved to a paved section.
- 57.02 The maintenance period shall be until 90% of the parcels within the subdivision have received a certificate of occupancy from the City's Inspection Department with a maximum time period of 3 years from the date of street construction acceptance by the City of Minot.
- 57.03 The developer shall supply the City of Minot with funds placed in an escrow account accessible to the City of Minot for repairs to infrastructure within the City right of way or easement with public infrastructure. The amount to be placed in escrow shall be:

\$1000 per platted parcel within the subdivision.

- 57.04 Escrow fees per parcel are due at the time of construction plan submittal to the City of Minot. The number of parcels to be constructed will be counted to obtain the escrow amount to be paid to the City of Minot.
- 57.05 During the maintenance period, the City of Minot shall conduct inspections of all infrastructure within the subdivision. Damage to roadway and utilities caused by poor workmanship, or development activities which includes work done by others on individual parcels within the subdivision shall be repaired according to the City of Minot Standard Specifications.
- 57.06 If the developer refuses or does not have the ability to complete the repairs, the City of Minot will use the supplied escrow funds to hire a contractor to complete the repairs.
- 57.07 Once all repairs have been completed after the maintenance period, the City of Minot shall assume all maintenance responsibilities of the subdivision within the public right of way and easements dedicated to public utilities. Any remaining escrow funds will then be returned to the developer.

END OF SECTION