

STANDARD PROVISIONS



PUBLIC WORKS DEPARTMENT

Revised 2017

BENTON COUNTY STANDARD PROVISIONS
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ABBREVIATIONS

AASHTO	----- American Association of State Highway and Transportation Officials
ACI	----- American Concrete Institute
AGC	----- Associated General Contractors of America
AIA	----- American Institute of Architects
AISC	----- American Institute of Steel Construction
AISI	----- American Iron and Steel Institute
ANSI	----- American National Standards Institute
APWA	----- American Public Works Association
ASCE	----- American Society of Civil Engineers
ASME	----- American Society of Mechanical Engineers
ASTM	----- American Society for Testing and Materials
AWPA	----- American Wood Preservers Association
AWS	----- American Welding Society
AWWA	----- American Water Works Association
DEQ	----- Department of Environmental Quality
EPA	----- Environmental Protection Agency
FHWA	----- Federal Highway Administration
ITE	----- Institute of Traffic Engineers
MUTCD	----- Manual on Uniform Traffic Control Devices
NEC	----- National Electrical Code
ORS	----- Oregon Revised Statutes
OSHA	----- Occupation Safety and Health Administration
ODOT	----- Oregon Department of Transportation
PCA	----- Portland Cement Association
SAE	----- Society of American Automotive Engineers
UBC	----- Uniform Building Code
UL	----- Underwriter's Laboratories, Inc.
WWPA	----- Western Wood Products Association

DEFINITIONS

Acts of God

A natural phenomenon of such catastrophic proportions or intensity as would reasonably prevent performance.

Advertisement

The public announcement (**notice to contractors**) inviting bids for work to be performed or materials to be furnished.

Approved Equal

A product, component or process whose use in or on a particular project is specified as a standard for comparison purposes only. The "equal" product, component or process shall be the same or better than that named in function, performance, reliability, quality and general configuration.

Bid Bond

The approved security furnished by the contractor in the form of a cashier's check or the surety bond for bid guarantee.

Bidder

An Entity that submits a Bid in response to an invitation to bid.

Change Order

A written order approved by the County and issued by the Engineer or Project Manager to the Contractor, covering changes in the plans, specifications, or quantities within the scope of the Contract.

Contract

The written agreement between the county and contractor including without limitation all contract documents, describing the work to be completed and defining the rights and obligations of the county and contractor.

Contract Documents

The written agreement covering the performance of the work, the advertisement calling for bids, the proposal, instruction to bidders, Drug and Alcohol Policies, First Tier designations, plans, all specifications, addenda, permits, Contract, Contract bonds, Change Orders in the course of work, and any approved revisions made during the performance of the work to any of the above listed documents.

Contract Bid Item

A specific unit of work for which a price or basis of payment is provided in the Contract.

Contractor

The Entity awarded and entered into the Contract with the county pursuant to the solicitation.

Days

Days shall be defined as calendar days, including week days, weekends and holidays.

Electronic transmission

Written communication sent either by facsimile (FAX) or electronic mail.

Engineer

The County Engineer or an authorized representative.

Entity

Any of the following with legal capacity to enter into a contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government agency, public corporation, or other legal or commercial organization.

Extra Work

New and unforeseen items of work will be classed as extra work when they cannot be covered by any of the various items for which there is a bid price or by combinations of such items.

Inspector

The authorized representative of the Engineer or Project Manager entrusted with making detailed inspections of the work or materials.

Notice to Proceed

A written notice to the Contractor from the Engineer or Project Manager authorizing the contractor to begin performance of the work and the date for final completion of the Contract.

ODOT Standard Specifications

The latest edition of the standard specifications document published by the State of Oregon entitled "Oregon Standard Specifications for Construction."

Performance Bond

The approved security furnished by the contractor or the contractor's surety as a guaranty of the contractor's performance of the contract.

Plans

The official plans, profiles, cross section, elevations, details and other working, supplementary and detail drawings, or reproductions thereof, signed by the Engineer or Architect, approved by the Project Manager, which show the location, character, dimensions and details of the work to be performed. Plans are a part of the Contract documents, regardless of the method of binding.

Proposal

The offer of the bidder to perform work at the unit prices quoted, submitted on the County's official proposal form, properly signed and guaranteed.

Specified

As used herein the word specified, or as specified, means as required by the Contract documents.

Standard Plans or Drawings

Details of structures, devices, or instructions adopted by the County as a standard and referred to in the Contract documents by title or number.

Standard Provisions

The current edition of the “Benton County Standard Provisions” published by Benton County Public Works Department, including the Oregon Standard Specifications for Construction.

Station

A distance measured horizontally along a surveyed centerline.

Subcontractor

An Entity with whom the Contractor contracts to perform a portion of the work.

Surety

The Entity that issues the bond.

Unit Price

A Contract item of work providing for payment based on a specified unit of measurement. For example: Lump sum, linear foot or cubic yard.

Utility

A line, facility, or system for producing, transmitting, or distributing communications, power, electricity, heat, gas, oil, water, steam, waste, and storm water not connected with roadway drainage, or any other similar commodity which directly or indirectly serves the public. The term may also mean the utility company, district, or cooperative owning and operating such facilities, including any wholly-owned or controlled subsidiary.

Work

That which is proposed to be constructed or performed under the Contract including the furnishing of all material, labor, supervision, tools, machinery and appurtenances necessary to complete the Contract.

STANDARD CONTRACT PROVISIONS

I. PROPOSAL REQUIREMENTS AND CONDITIONS

- A. Proposal Forms: The bidder shall submit their proposal on the form furnished to them. Proposals submitted on forms other than the one issued to the bidder will be disregarded. All proposals shall give the prices proposed, both in writing and figures, and shall be signed by the bidder. The bidder shall fill out all blanks in the proposal form as therein required. Written amounts shall govern in cases of discrepancy between the amounts stated in writing and the amounts stated in figures. In the case of discrepancy between unit prices and totals, the unit prices shall prevail.
- B. Modification of Proposal: Any bid may be modified at any time prior to the scheduled time for the opening of proposals, provided that an electronic transmission or written request is received by the Engineer or Project Manager prior to the scheduled opening. The request shall not reveal any bid price but shall state only the modification, so that the final prices and terms shall not be known until the proposal is opened.
- C. Withdrawal of Proposal: Any bid may be withdrawn at any time prior to, and not after, the hour fixed in the public notice for the opening of bids, provided that a request in writing or electronic transmission, executed by the bidder or their duly authorized representative, for the withdrawal of such bid is filed with the Engineer or Project Manager. The withdrawal of a proposal shall not prejudice the right of a bidder to file a new bid.
- D. Proposal Guarantee: Each proposal shall be accompanied by cashier's check, or bid surety bond made payable to Benton County in the amount equal to ten percent (10%) of the total amount of the proposal submitted. This amount shall be given as a guarantee that, if awarded the Contract, the successful bidder will execute the Contract and furnish a properly executed performance bond in the full amount of the Contract price within fifteen (15) days after notification that the bid has been accepted. The County reserves the right to retain the bid security of the three lowest bidders until successful bidder has signed and delivered the Contract and furnished a one hundred percent (100%) performance bond or other satisfactory assurance that the work under the Contract will be completed without any direct or indirect damage or liability to the County. Bid security of all except the three lowest bidders will be returned promptly after the canvas of bids. Bid security of the three lowest will be returned five (5) days after the Contract has been executed or other disposition has been made.
- E. Amount of Work to be Done: The quantities given in the bid document are approximate only, being given as a basis for the comparison of bids, and the County does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of

any class or portion of the work, or to omit portions of the work, as may be deemed necessary or as directed by the Engineer or Project Manager.

- F. Examination of Plans, Specifications, Special Provisions and Site of Work: The bidder shall examine carefully the site of the work contemplated and the proposal, plans, specifications, and contract forms. It will be assumed that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality and quantities of work to be performed and materials to be furnished, and as to the requirements of these specifications, the special provisions, standard specifications, and the Contract. Bidders must satisfy themselves through their own investigations as to the conditions to be encountered.
- G. Interpretation of Contract Document: Any person contemplating the submission of a proposal and being in doubt as to the meaning or intent of said Contract documents should request of the Engineer or Project Manager, in writing, an interpretation thereof. Any interpretation or change in said Contract documents will be made only in writing, and a copy of such interpretation or change will be mailed, sent by electronic transmission or delivered to each person receiving a set of the documents. The County will not be responsible for any other explanation or interpretations of said documents.
- H. Familiarity with Laws and Regulations: Each bidder is responsible for all local, State and Federal laws and regulations relative to the execution of the work, the employment of labor, protection of public health, the protection of private property, right-of-way and access to the work, fire protection regulations and all other similar requirements. Bids will include a statement that provisions required by ORS 279C.830 will be complied with. The contractor shall indemnify, defend, and hold harmless the County and its representatives from liability arising from or related to the violation of terms and conditions of its contract and laws by those engaged in any phase of the work.
- I. Disqualification of Bidders: The bid(s) of a disqualified bidder may be rejected. Any of the following reasons is sufficient to disqualify a bidder:
1. More than one bid proposal is submitted for the same work by an Entity under the same or different name(s).
 2. Evidence of collusion among Bidders. Participants in collusion will be found not responsible, and may be subject to criminal prosecution.
 3. Any of the grounds for disqualification cited in ORS 270C.440.
 4. A bidder may be disqualified if the bidder has not been pre-qualified as required by ORS Chapter 279B or C.
 5. A bidder will be disqualified if they have:
 6. Been declared ineligible by the Commissioner of the Bureau of Labor and Industries (BOLI) under ORS 279C.860
 7. Not been registered (licensed) by the Oregon Construction Contractors Board (CCB) or been licensed by the State Landscape Contractors Board before submitting a bid (ORS 279C.365(1)(k), ORS 701.021, ORS 701.026, and ORS 671.530). The Bidder's registration number and expiration date shall be shown on the Bid Form, if requested. Failure to furnish the

- registration number, if requested, will render the Bid non-responsive and subject to rejection. (Not required on Federal-Aid projects.); or
8. Been determined by the CCB under ORS 701.227 not to be qualified to hold or participate in a public contract for a public improvement.

II. AWARD AND EXECUTION OF CONTRACT

- A. Award of Contract: The County reserves the right to accept or reject any or all proposals and to waive any informalities or irregularities in any proposal. The Contract award will be made by the County on the basis of that proposal, which in its sole and absolute judgment will best serve the interests at Benton County. The award of the Contract, if it is awarded, will be made within thirty (30) calendar days after the date of the bid opening.
- B. Execution of Contract: The Contract shall be signed by the successful bidder and returned, together with the Contract bonds, within fifteen (15) days, after the bidder has received notice that the Contract has been awarded.
- C. Failure to Execute Contract: Failure to execute a Contract and file acceptable bonds as provided herewith within fifteen (15) days, after the bidder has received notice that the Contract has been awarded, shall be just cause for the annulment of the award and the forfeiture of the proposal guaranty. If the successful bidder refuses or fails to execute the Contract, the County may award the Contract to the second lowest responsible bidder. If the second lowest responsible bidder refuses or fails to execute the Contract, the County may award the Contract to the third lowest responsible bidder. On the failure or refusal of the second or third lowest responsible bidder, to whom any such contract is so awarded, to execute the same, such bidders' guarantees shall be likewise forfeited to the County.
- D. Performance Bond: The successful bidder shall file with the County at the time of execution of the Contract, a performance and payment bond for the full amount of the Contract price. The surety company issuing the bond shall be authorized to do business in the State of Oregon. The Attorney-in-Fact (Resident Agent) who executes the performance and payment bond in behalf of the surety company, must attach a copy of his power-of-attorney as evidence of his authority. A notary shall acknowledge the power as of the date of execution of the surety bond, which it covers.

III. SCOPE OF WORK

- A. Intent of Contract: The intent of the Contract is to provide for the construction and completion of the work described. The Contractor shall furnish all labor, materials, equipment, tools, transportation and incidentals required to complete the work in accordance with the plans, specifications and terms of the Contract. The Contractor shall perform all work in accordance with the lines, grades, typical cross sections, dimensions and other details shown on the plans or as modified by written orders of the Engineer or Project Manager and all other work determined by the Engineer or Project Manager as necessary for the proper performance and completion of the project.
- B. Inconsistencies and Omissions: Where inconsistencies exist between the special provisions and any other part of these documents, the special provisions shall govern. Any discrepancies, omissions or errors found in the Contract documents or differences between the site conditions and those indicated in the Contract documents shall be reported to the County immediately. The County will correct, in writing, such omissions or errors within a reasonable time.

Order of precedence: The Engineer or Project Manager will resolve any discrepancies between the County Standard Provisions and other documents in the following order of precedence:

1. County Special Provisions/Specifications
 2. Change orders
 3. County prepared and stamped drawings specifically applicable to the project and bearing the project title.
 4. County standard drawings
 5. Benton County Standard Provisions
 6. Oregon Standard Specifications for Construction
- C. Alterations: The County, without invalidating the contract, may order extra work or make changes by altering, adding to, or deducting from the work. All such work shall be executed under the conditions of the original Contract, except that claim for extension of time and payment for extra work caused thereby shall be adjusted at the time of ordering such change. If work is deleted by change orders, the amount of the contract shall be adjusted at the time of ordering such change.

Contractor further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed by Contractor without prior written authorization by county.

In giving instructions, the Engineer or Project Manager may order minor changes in the work not involving extra cost and not inconsistent with the purpose of the work; but otherwise, except in an emergency endangering life or property, extra work or deductions from the work shall be performed only in pursuance of a written order from the County, signed or countersigned by the Engineer or Project Manager, or a written order from the Engineer or Project Manager stating that the County has

authorized the deduction, extra work, or change; and no claim for additional payment shall be valid unless so ordered.

If the work is reduced by alternations, such action shall not constitute a claim for damages based on loss of anticipated profits.

- D. Extra Work: The Contractor shall do extra work and furnish materials and equipment; therefore, as may be required in writing by the Engineer or Project Manager, but the Contractor shall do no extra work except upon written order from the Engineer or Project Manager, and in the absence of such written order the Contractor shall not be entitled to payment for such extra work. All bills for extra work shall be filed in writing with the Engineer or Project Manager. For such extra work the Contractor shall receive compensation at the prices agreed upon in writing or on a time and material basis.
- E. Contract Documents: The County will furnish to the Contractor, upon request and free of charge, three (3) copies of the Contract documents and three (3) sets of full-scale plans. The Contractor shall keep one copy of the documents and one set of plans on the job site in good order available to the Engineer or Project Manager.
- F. Detours: The Contractor shall construct and maintain detours including signing and traffic controls for the use of public traffic as provided in these specifications, or as shown on the plans or as directed by the Engineer or Project Manager.

At all street crossings, existing driveways, water gate valves, and fire hydrants, the Contractor shall make provisions for trench crossings for free access either by means of backfill or temporary bridges, as the Engineer or Project Manager may direct. Means shall also be provided whereby all storm and wastewater can flow uninterrupted in gutters or drainage channels. The Contractor shall provide notice to the appropriate parties contained in the County's Emergency Notification list regarding any delays or closures resulting from the Contractor's work. Detours used exclusively by the Contractor for hauling materials and equipment will be constructed and maintained by the Contractor at their expense.

The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for closing down the work until such detours are in satisfactory condition for the use of public traffic, or the County may provide, maintain, or remove the detour and deduct the costs thereof from any payment due the Contractor.

- G. Final Cleaning Up: Before acceptance and final payment, the Contractor shall clean the roadway, worksites and all ground occupied by the Contractor-in connection with the work, of all rubbish, excess materials, false work, temporary structures, and equipment and all parts of the work shall be left in a neat and presentable condition.

IV. CONTROL OF WORK

- A. Authority of the Engineer and/or Project Manager: The Engineer or Project Manager shall be the County's representative during the construction and observe the work in progress on behalf of the County. The Engineer or Project Manager has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract. The Engineer or Project Manager shall also have authority to reject all work and materials, which do not conform to the Contract. To prevent disputes and litigation, the Engineer or Project Manager will, within a reasonable time after their presentation, make decisions, in writing, on all claims of the County or Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract documents. The Engineer or Project Manager's written estimates and decisions shall be a condition precedent to any right to receive additional money under the Contract.
- B. Agency's Representatives: Representatives may be assigned to various portions of the work by the Engineer or Project Manager. It is understood that such representatives shall have the power, in the absence of the Engineer or Project Manager, to issue instructions and make decisions within the limitations of the authority of the Engineer or Project Manager. The authority of such representatives shall, however, be limited to the particular portion or phase of the work to which they are assigned and by the particular duties assigned to them.

Inspectors will not be authorized to revoke, alter, enlarge or relax the provisions of the Contract or approve or accept any portion of the work. The inspector will have authority to reject defective material and to suspend work that is being improperly done.

- C. Inspection: The Engineer or Project Manager shall at all times have access to the work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials used and employed, and the workmanship, are in accordance with the requirements and intention of these specifications. All work done and all materials furnished shall be subject to the Engineer or Project Manager's inspection and approval. In the event the Contractor elects to work on a Saturday, Sunday or Legal Holiday, the Contractor shall notify the Engineer or Project Manager in advance in order that inspection may be performed. The Contractor shall pay County's expense of providing such special inspection on a Saturday, Sunday or Legal Holiday.

The inspection of the work shall not relieve the Contractor of any of their obligations to fulfill the Contract as prescribed, and defective work shall be made good and unsuitable materials may be rejected, notwithstanding that such defective work and materials have been previously overlooked by the Engineer or Project Manager and accepted or estimated for payment.

- D. Plans: The approved plans shall be supplemented by such working drawings as are necessary to control the work adequately. All authorized alterations affecting the

requirements and information given on the approved plans shall be in writing. No changes shall be made of any plan or drawing after the same has been approved by the Engineer, except by Engineer or Project Manager's direction.

Working drawings for any structure shall consist of such detailed plans as may be required for the prosecution of the work, and are not included in the plans furnished by the Engineer or Project Manager. Working drawings shall be approved by the Engineer or Project Manager before any work involving these plans is performed. These plans will be subject to approval insofar as the details affect the character of the finished work, but other details of design will be left to the Contractor, who shall be responsible for the successful construction of the work.

It is expressly understood, however, that approval by the Engineer or Project Manager of the Contractor's working drawings does not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreement of dimensions and details. It is mutually agreed that the Contractor shall be responsible for agreement and conformity of his working drawings with the approved plans and specifications.

Full compensation for furnishing all working drawings shall be considered as included in the prices paid for the various Contract items of work, and no additional allowance will be made therefore.

- E. Conformity with Plans and Allowable Deviations: Finished surfaces in all cases shall conform to the lines, grades, cross-sections, and dimensions shown on the approved plans. Deviations from the approved plans and working drawings, as may be required by the conditions of construction, will in all cases be determined by the Engineer or Project Manager and authorized in writing.
- F. Coordination of Plans, Specifications, and Special Provisions: These Standard Provisions, the plans, special provisions, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is binding as though occurring in all. They are intended to be cooperative, to describe and provide for a complete work. In the case of a conflict between one or more of these documents, the order of precedence among the documents shall be (1) change orders, (2) special provisions, (3) County plans, (4) specifications exclusive of special provisions, and (5) standard specifications and (6) Oregon Standard Specifications for Construction; (7) all other contract documents not listed above.
- G. Interpretation of Plans and Specifications: Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in these specifications and the special provisions, the Contractor shall apply to the Engineer or Project Manager for such further explanations as may be necessary. These clarifications shall conform to the same as part of the Contract, so far as may be consistent with the original specifications; and in the event of any doubt or questions arising respecting the true meaning of the specifications, reference shall be made to the Engineer or Project Manager, whose decision thereon shall be final. In

the event of any discrepancy between any drawings and the figures written thereon, the figures shall be taken as correct.

- H. Lines and Grades: Lines and grades shall be furnished by the Engineer or Project Manager unless stated otherwise. The Contractor shall give the Engineer or Project Manager no less than 48 hours notice of the time and place where lines and grades will be needed. All stakes, marks, etc., shall be carefully preserved by the Contractor, and in cases of their careless or unnecessary destruction or removal by the Contractor or their employees, such stakes, marks, etc., shall be replaced by the Engineer or Project Manager at the Contractor's expense. The Contractor shall be responsible for the transfer of the lines and grades as set by the Engineer or Project Manager to the finished work.
- I. Responsibility of the Contractor: The Contractor shall assume all responsibility for the work. The Contractor shall do all the work and furnish all labor, materials, equipment, tools and machines necessary for the performance and completion of the project in accordance with the Contract.

The Contractor agrees that they are fully responsible to the County for the acts and omissions of their subcontractors and of persons either directly or indirectly employed by them as they are for the acts and omissions of persons directly employed by them. Nothing contained in the Contract shall create any contractual relations between subcontractors and the County.

The County reserves the right to Contract for and perform other or additional work on or near the work under the Contract. Contractors working on the same project shall coordinate with each other as directed.

- J. Equipment: Equipment not suitable to produce the quality of work required will not be permitted to operate on the project.
- K. Existing Utilities: The locations of the existing major utilities are indicated on the drawings. Lines such as water, gas and sewer services may not be indicated. It shall be the sole responsibility of the Contractor to determine the exact location and depth of all major utilities shown on the plans and all minor lines, whether indicated or not as per ORS 757.557.

The Contractor shall notify utilities in accordance with the Oregon Utility Notification Center prior to commencing work, in order to give the utilities a reasonable opportunity to establish the location of facilities on site.

The Contractor shall cooperate with the owner of any utility facilities in removal, replacement, and relocation operations in order that services provided by those parties will not be unnecessarily interrupted.

- L. Protection of Survey Monuments: The Contractor shall not disturb permanent survey monuments, stakes, or bench marks without the consent of the Engineer or Project Manager. The Contractor shall notify the Engineer or Project Manager and bear the

expense of replacing any that may be disturbed without permission. Replacement shall be done by a registered land surveyor in the State of Oregon.

- M. Removal of Defective and Unauthorized Work: Work which has been rejected, shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement.

Any work beyond what is shown on the plans or established by the written authority of the Engineer or Project Manager will be considered unauthorized and will not be paid. Work so done may be ordered removed at the Contractor's expense. Failure on the part of the Contractor to comply with any order of the Engineer or Project Manager under these provisions, shall give the County the authority to have defective work remedied or removed and replaced at the Contractor's expense.

At the County's discretion, any defective work that is minor in nature and does not negatively impact the project, may be left in place; however, it shall not be eligible for compensation and may require deduction(s) in compensation.

- N. Maintenance of Work During Construction: The Contractor is responsible for all maintenance of the project site during construction unless otherwise stipulated in the contract documents.

All costs of maintenance work during construction shall be included in the unit price bid on the various pay items. The Contractor will not be paid an additional amount for maintenance work, unless otherwise specified.

If the Contractor, at any time, fails to comply with these provisions, the Engineer or Project Manager will immediately notify the Contractor of such noncompliance. If the Contractor fails to remedy unsatisfactory maintenance within twenty-four (24) hours, after receipt of such notice, the County may immediately proceed to maintain the project and the entire cost of this maintenance will be deducted from monies due or to become due the Contractor at the rate of 200 percent of the County's actual force account costs.

- O. Dust Control: At all times during construction and until final completion and acceptance of the work, the Contractor shall prevent an air-borne dust nuisance by watering or other acceptable method as required by the Engineer or Project Manager, to treat the work site. The Contractor shall perform such treatment within two (2) hours after notification by the Engineer or Project Manager that the air-borne nuisance exists. If the Contractor fails to abate the nuisance within two hours, the County may order that the treatment of the site be done by others and all expenses incurred in the performance of this treatment shall be charged to the Contractor.
- P. Final Inspection: The Engineer or Project Manager will not make the final inspection until the work has been completed and the final clean up performed. Any defective work or material that may be discovered by the County before the final acceptance of work, or before final payment has been made, or during the guarantee period, shall follow the provisions stipulated in Section IV. Paragraph M. of Defective and Unauthorized Work. Failure on the part of the Engineer or Project

Manager to condemn or reject bad or inferior work or materials shall not be construed to imply acceptance of such work or materials.

V. CONTROL OF MATERIAL

- A. Source of Supply and Quality of Materials: All materials shall be new and of a quality equal to that specified, unless otherwise approved by County. At the option of the Engineer or Project Manager the source of supply of each of the materials shall be approved by County before the delivery is started.
- B. Defective Materials: All materials not conforming to the requirements of these specifications shall be considered as defective and, whether in place or not, shall be rejected. They shall be removed immediately from the site of the work, unless otherwise permitted by the Engineer or Project Manager. Upon failure on the part of the Contractor to comply immediately with any order of the Engineer or Project Manager made under these provisions, the County shall have authority to remove and replace defective material and to deduct the cost of the removal and replacement from any monies due or to become due the Contractor.
- C. Samples and Tests: Materials furnished by the Contractor may be tested by the County or its authorized representative, in accordance with commonly recognized standards of national organizations. The Contractor shall furnish, without charge, such samples of all materials as are requested by the Engineer or Project Manager. No material shall be used until it has been approved the Engineer or Project Manager. Samples will be secured and tested whenever necessary to determine the quality of material. Samples for testing local sources of material shall be taken by or in the presence of the Engineer or Project Manager. Promptly after the approval of the Contract, the Contractor shall notify the Engineer or Project Manager of the proposed sources of supply of all materials to be furnished by Contractor.

Where the specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to County, of its readiness for inspection, and without the approval of County. Should any work be covered up without such notice and approval, it must, if required by the County, be uncovered for examination at the Contractor's expense.

- D. Trade Name and Alternatives: For convenience in designation on the plans or in the specifications, certain equipment, methods, or materials may be designated under a trade name, name of a manufacturer and/or catalogue information. The use of alternative equipment, methods, or material which is of equal quality and meets specifications will be permitted, subject to the approval of the Engineer and Project Manager, in accordance with the following requirement:

The burden of proof shall be on the Contractor to provide documentation as to the comparative quality and suitability of alternative equipment, methods, or materials.

VI. LEGAL RELATIONS AND RESPONSIBILITY

- A. Laws to be Observed: Contractor, their employees, subcontractors and agents, shall comply with and keep fully informed of all federal, state and local laws, regulations, ordinances and orders which pertain to this contract. It is Contractor's responsibility to know which laws, regulations, ordinances and orders are applicable to this contract. Contractor shall protect and indemnify the County, the Engineer, and all of their officers and agents against any claim or liability arising from or based on the violation of any such law, regulation, ordinance or order, whether by Contractor or their employees. If any discrepancy or inconsistency is discovered in the drawings, specifications, or Contract for the work in relation to any such law, ordinance, regulation order or decree, the Contractor shall immediately report the same to the Engineer or Project Manager in writing.

The Contractor's attention is specifically directed to Chapters 279, 279A, B and C of the Oregon Revised Statutes, as amended which are incorporated by reference as a part of the Contract documents.

Pursuant to ORS 279C.505 Contractor shall:

1. Make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the contract.
2. Pay all contributions or amounts due the Workers Compensation Fund from such contractor or subcontractor incurred in the performance of the contract.
3. Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
4. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

If Contractor fails, neglects or refuses to pay promptly any entity's claim for labor or services that the entity provides to the Contractor or a subcontractor in connection with this contract as the claim becomes due, County may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due Contractor pursuant to this contract.

1. Contractor shall employ no person for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires otherwise, and in such cases the contractor shall pay the employee at least time and a half pay for all overtime as specified in ORS 279C.520, as amended.
2. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and

hospital care, services or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the Contractor agrees to pay for the services and all moneys and sums which the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

- B. Permits and Licenses: All permits, licenses, and inspection fees necessary for the prosecution and completion of the work shall be secured and paid for by the contractor unless otherwise specified.
- C. Assignment: Assignment of funds due or to become due under the Contract to the Contractor will not be permitted unless:
1. The assignment request is made on the form provided by the County
 2. The Contractor secures the written consent of the Contractor's Surety to the assignment; and
 3. The Engineer or Project Manager approves the assignment.
- D. Subcontracting: The Contractor shall be held responsible for the sub-Contractor's work, which shall be subject to the provisions of the Contract and specifications.
1. Contractor shall comply with ORS 279C.370 First-tier subcontractor disclosure. This shall be identify the work to be subcontracted, the name of subcontractor and the description of each portion of the work to be subcontracted.
 2. Contractor may substitute a first-tier subcontractor under the provisions of ORS 279C.585, as amended.
 3. Where a portion of the work, which has been subcontracted by the Contractor, is not being prosecuted in a manner satisfactory to the county, the subcontractor shall be removed immediately on the requisition of the Engineer or Project Manager and shall not again be employed on the work.
- E. Other Contracts: The County shall have the right to let other Contracts be coordinated with this Contract. The Contractor shall cooperate with such other Contractors. Any matter of dispute shall be decided by the Engineer or Project Manager.
- F. Contractor's Responsibility for Worksite: Until the formal acceptance of the work by the County, the Contractor shall be responsible for the work and worksite and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause, including but not limited to vandalism, whether or not arising from the execution of the work. The contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before its completion and acceptance and shall bear the expense thereof except for such injuries or damages as are directly and proximately caused by

the County, its employees or agents. During periods of suspension of the work, the Contractor shall continue to be responsible for protecting and repairing the work.

G. Insurance:

1. The Contractor and its subcontractors shall maintain insurance acceptable to the County in full force and effect throughout the term of this contract.
2. It is agreed that any insurance maintained by County shall apply in excess of, and not contribute with, insurance provided by Contractor. The policy or policies of insurance maintained by the Contractor and its subcontractors shall provide limits and coverages as specified in the contract.
3. Contractor agrees to deposit with the County, at the time the executed contract, Certificates of Insurance of Binders of Insurance if the policy is new or has expired, sufficient to satisfy the County that the insurance provisions of the contract have been complied with and to keep such insurance in effect and the certificates and/or binders thereof on deposit with the County during the entire term of this contract. Such certificates and/or binders must be delivered prior to commencement of the work.
4. The procuring of such required insurance shall not be constructed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury or loss caused by negligence or neglect connected with this contract.

H. Patents: The contractor shall assume all costs arising from the use of patented materials, equipment devices, or processes used on or incorporated in the work, and agrees to indemnify and hold harmless the County, the Engineer or Project Manager, and their duly authorized representatives, from all lawsuits, or actions of every nature for, or on account of the use of any patented materials, equipment, devices or processes.

I. Taxes and Charges: The Contractor agrees to withhold and pay any and all State or Federal taxes, Social Security charges, amounts due to the Workers Compensation Fund, any and all charges, fees, or sums connected with the work.

J. Wage Rates: The minimum wage rates applicable to the work are prescribed under the provisions of ORS 279C.800 through 279C.870 and laws amendatory thereto. The Contractor and all subcontractors shall file a copy of the Contractor's wage certification with the County and State and provide to County prior to each pay request. Copies of the current prevailing wage rates may be obtained from the Bureau of Labor of the State of Oregon (BOLI) and will be bound in the final contract documents.

K. Payment of Obligations: The Contractor shall promptly make payment for labor, materials, supplies, and provisions at such times that they become due and payable. The Contractor shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.

Neither the final payment nor any part of the retained percentage shall become due until the Contractor has submitted to the County a signed Certification of Work

Completion and Acceptance form, satisfactory to the County, stating that so far as the Contractor has knowledge or information, all accounts for materials, labor, and incidentals in connection with the work have been paid in full.

- L. Public Safety and Convenience: The Contractor shall conduct the project with proper regard for the safety and convenience of the public. When the project involves use of public ways, the Contractor shall provide flaggers when needed or directed and shall maintain a means of access to all public and private properties.
1. Private residential driveways shall be closed only with approval of the Engineer, the Project Manager or specific permission of the property owner. The Contractor shall not interfere with normal operation of public transit vehicles unless otherwise authorized. The Contractor shall not obstruct or interfere with travel over any public street or sidewalk without approval. Where detours are necessary, they shall be maintained with a good surface and be clearly marked. The Contractor shall assure the safety of the public from open trenches and excavations with approved barricading techniques, which can be seen from a reasonable distance. At night where allowed, the Contractor shall mark all open work and obstructions by approved barricading and lighting means. The Contractor shall install and maintain all necessary signs, lights, flares, barricades, railings, ramps, stairs, bridges and facilities. The Contractor shall observe all safety instructions received from the Engineer, Project Manager or, governmental authorities but following of such instructions shall not relieve the Contractor from the responsibility or liability for accidents to workers or damage or injury to person or property.
 2. Emergency traffic such as police, fire and disaster units shall be provided reasonable access to and through the work area at all times.
 3. The Contractor shall be liable for any damages, which may result from failure to provide such reasonable access or failure to notify the appropriate authority.
- M. Personal Safety: The Contractor shall be responsible for conditions of the job site, including safety of all persons and property during performance of the work. Safety provisions shall conform to the applicable Federal, State, and local laws, ordinances and codes. The County reserves the right to stop work if a potential serious safety violation is observed. The duty of the Engineer or Project Manager to conduct construction reviews of the Contractor's performance is not intended to include a review of the adequacy of the Contractor's safety measures in or near the construction site.
- N. Protection of Property: The Contractor shall continuously maintain adequate protection of all their work from damages and shall protect the County's property and the property of others from injury or loss arising in connection with this Contract. Contractor shall make good any such damage, injury, or loss, except as may be directly due to errors in the Contract documents or caused by agents or employees of the County. He shall adequately protect adjacent property as provided by the law and in the Contract documents.

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor, without special instruction or authorization from the Engineer or

Project Manager, is hereby permitted to act, at their discretion, to prevent such threatened loss or injury; and they shall so act, without appeal if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined by agreement or arbitration.

- O. Indemnity: The Contractor shall hold-harmless, indemnify, and defend Benton County, its officers, agents and employees from any and all liability, actions, claims, losses, damages, or other costs including attorney's fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during or in connection with the performance of the work described in this Contract, except liability arising out of the sole negligence of the County and its employees. Such indemnification shall also cover claims brought against Benton County under state or federal workers compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

- P. Disposal of Materials: When any materials, including excess of unsuitable excavated earth or other roadway materials are to be disposed of outside the limits of the work, the Contractor shall first obtain permission in writing from the property owner of whose property the disposal is to be made and shall file a copy of such permission with the Engineer or Project Manager. Material shall also be placed in accordance with a County approved excavation and grading plan for each site to be utilized.

- Q. Guarantee and Correction of Defective Work: All work contained herein, shall be guaranteed for a period of one (1) year against defects in materials and workmanship that become evident within one (1) year after the date of the written notice from the Engineer or Project Manager recommending final acceptance of the entire project by the County. The Contractor also agrees to make, at their expense, repairs or replacements of any materials, systems or equipment in which the appearance of defects might cause future failures. Notwithstanding that the appearance of such defects at the time of discovery, have no effect on the operation of the equipment, systems, or claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders from the County. If the Contractor fails to make the repairs and replacements promptly, the County may do the work, and the Contractor shall be liable for the cost thereof.

The Contractor shall extend to the County, or cause to be extended to the County, all equipment, systems and material guarantees provided by manufacturers or suppliers that exceed the above one (1) year guarantee period.

VII. Prosecution and Progress

- A. Preconstruction Conference: A preconstruction conference will be scheduled by the County prior to commencement of any work. The meeting is to include, but not necessarily be limited to, representatives of the County, Engineer, Project Manager, Contractor, subcontractors and affected utility companies.
- B. Construction Schedules: At the preconstruction conference, the Contractor shall furnish the Engineer or Project Manager schedules of the expected progress of the work under the Contract. In the event the work performed does not correspond to the schedule, the Contractor shall submit a revised schedule when requested by the Engineer or Project Manager.
- C. Progress of the Work: The Contractor shall begin work within fifteen (15) days after the County has awarded the Contract unless otherwise notified and shall diligently prosecute the same to completion within the time limits provided in the Contract documents and specifications.

Should the Contractor begin work in advance of receiving notice that the Contract has been approved as provided above, any work performed by the Contractor in advance of the said date of approval shall be considered as having been done by them at their own risk unless said Contract is so approved.

- D. Contract Time: The Contract time, unless otherwise specified, will begin on the fifteenth day following the award of the Contract by the County. All work shall be completed within the number of calendar days specified, prior to a fixed completion date, as applicable. Calendar days shall be defined as every day of the year subject to the following exclusions:
 - 1. Acts of God.
 - 2. Epidemics, quarantine restrictions, strikes, labor disputes, freight embargos and acts of the public enemy.
 - 3. Periods when the work is temporarily suspended upon written order of the Engineer or Project Manager.
- E. Temporary Suspension of Work: The Engineer or Project Manager shall have the authority to suspend the work wholly or in part, for such period as deemed necessary, due to unsafe conditions, unsuitable weather, or other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as deemed necessary, due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the Contract. The Contractor shall immediately comply with the written order of the Engineer or Project Manager to suspend the work wholly or in part. The work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the County.
- F. Delays and Extensions: The County may grant extensions of time to the extent it finds reasonable and justified when the delay is due solely to causes beyond the

control of the Contractor and subcontractors and without any fault, negligence or participation by them.

Causes, which will be given consideration for an extension of Contract time, include, but are not limited to, the following:

1. Errors, changes or omissions in the plans, and/or specifications.
2. Failure of the County, its representatives and its other Contractors to act promptly in carrying out obligations and duties.
3. Failure of the County to submit the Contract and bond to the Contractor for execution.
4. Performance of extra work.
5. Court orders enjoining the prosecution of the project.
6. An act of the County not authorized by the Contract or permitted by law.

The County will not consider an extension of Contract time based on shortage or inadequacy of labor and equipment, negligence or fault of the Contractor, and other deficiencies, which are within the Contractor's control or responsibility.

If, in the judgment of the Engineer or Project Manager, insufficient force is being employed, or inadequate equipment and methods are used, or if progress is for any reason unduly delayed, the Engineer or Project Manager may instruct the Contractor in writing to increase the force or equipment, or adopt improved methods to expedite the work, and the Contractor shall heed and follow such instruction. Conformity to the Engineer or Project Manager's instructions shall not relieve the Contractor of any responsibilities under this Contract.

An extension of Contract time will be considered only if the Contractor has given written notice to the County of the cause of delay, and makes claim for such extension prior to the Contract completion date. The decision by the County of the term of any extension or denial thereof shall be final.

- G. Liquidated Damages: Should the contractor fail to complete the work, or any part thereof, in the time agreed upon in the Contract or within such extra time as may have been allowed for delays by extensions granted as provided in the Contract, then the Contractor shall reimburse the County for the additional expense and damage for every day, Sundays and legal holidays excluded, that the Contract remains uncompleted after the date of completion provided by the Contract. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the work is the per diem rate stipulated in the Contract. The said amounts are hereby agreed upon as liquidated damages for the loss to the County on account of expense due to the employment of engineers, inspectors, and other employees after the expiration of the time for completion and on account of the value of the operation of the works dependent thereon. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which have accrued against the Contractor; and the County is authorized to deduct the amount of such damages from any monies due the Contractor for work performed or material furnished under this Contract; and the Contractor and their sureties shall be liable for any excess.

Payment of liquidated damages shall not release the Contractor from obligations in respect to the fulfillment of the entire Contract, nor shall the payment of such liquidated damages constitute a waiver of the County's right to collect any additional damages which may be sustained by failure of the Contractor to carry out the terms of the Contract.

- H. Conflicts, Errors and Omissions: The Contractor shall check and compare all plans prior to construction and notify the Engineer or Project Manager of any discrepancies or omissions in order to permit correction by the County. The Contractor shall immediately notify the Engineer or Project Manager of any hidden or unnoticed conditions encountered during the course of the work.
- I. Character of Workers: If any subcontractor or person employed by the Contractor shall fail or refuse to carry out the directions of the Engineer or Project Manager, appear to the County to be incompetent, act in a disorderly or improper manner, they shall be discharged immediately on the requisition of the Engineer or Project Manager. Such person shall not again be employed on the work.
- J. County's Right to do Work: If the Contractor should neglect to perform the work properly, the County shall notify the Contractor of the condition and take over and made good the deficiencies and deduct the cost thereof from the payments then or thereafter due the Contractor.
- K. County's Right to Terminate Contract: If the Contractor declares bankruptcy or if they make a general assignment for the benefit of their creditors; or if a receiver should be appointed on account of Contractor's insolvency; or if, except in cases for which extension of time is provided, the Contractor should persistently or repeatedly refuse or should fail to supply enough properly skilled workers, proper equipment, or proper materials, or if Contractor should fail to make prompt payment to subcontractors, material vendors or for labor; or persistently disregard laws, ordinances, or the instructions of the Engineer or Project Manager; or otherwise be guilty of a substantial violation of any provisions of the Contract documents or any laws or ordinance, then the County, upon the certification of the Engineer or Project Manager that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method the County may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the work is finished. If the expense of completing the Contract, including compensation for additional engineering, managerial, and administrative services, shall exceed such unpaid balance, the Contractor shall pay the difference to the County. The expense incurred by the County, as herein provided, and the damage incurred through the Contractor's default shall be certified by the Engineer or Project Manager.

The County reserves the right to terminate the Contract without recourse by the Contractor when the County judges it to be in its best interest. The work completed to date will be paid for at the Contract prices contained herein. The Contractor shall not be entitled to any additional compensation.

- L. Cleaning Up: Cleaning up shall be a continual process from the start of the work to final acceptance of the project. The Contractor shall, at all times, at their own expense, keep property, structure site, right of way, adjacent property, and the surfaces of streets, and roads on which work is in progress free from accumulations of waste material and rubbish caused by employees or by the work. Accumulations of waste materials that might constitute a fire hazard or public nuisance will not be permitted. Spill from the Contractor's or sub-contractor's vehicles and or equipment shall be promptly cleaned up. Upon completion of the construction, the Contractor shall, at their own expense, and to the satisfaction of the Engineer or Project Manager, remove all temporary structures, rubbish, and waste materials resulting from the Contractor's operations.

VIII. MEASUREMENT AND PAYMENT

- A. Measurement of Quantities: All work to be paid for at a Contract price per unit of measurement shall be measured by the Engineer or Project Manager in accordance with United States Standard Measures. Quantities for payment shall be based upon those given in the Contract and any written notice to the Contractor by the County changing or revising same to conform to any increase or reduction in the actual work required.

The quantities in the proposal and bid schedule are approximate only and prepared for the comparison of bids, and the County does not guarantee that the total amount of work will correspond with those quantities. . Payment will be made to the Contractor only for actual quantities of work performed and accepted and materials furnished in accordance with the Contract.

- B. Scope of Payment: The contractor shall accept the compensation as provided, in full payment for furnishing all materials, labor, tools and equipment necessary to the completed work and for performing all work agreed to under the Contract; Neither the payment for any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or materials.
- C. Payment and Compensation for Altered Quantities: When alterations in plans for quantities of work are ordered and performed, the Contractor shall accept payment in full at the contract unit price for the actual quantities of work done, except as otherwise provided in paragraphs of these specifications. No allowance will be made in any case for loss of anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as stipulated in such agreements.
- D. Extra Work & Force Account Work: When work is ordered by the Engineer or Project Manager, which cannot be classified under any of the items for which unit prices are established, it shall be paid for as extra work at the rate agreed to in writing between the Contractor and the County or such work may be done on a force account basis where the Contractor shall receive the actual cost of all labor, material and equipment furnished by them as shown by daily itemized reports of force account work done. To the actual costs above, amounts equal to a percentage of the actual costs will be allowed as follows.

Labor.....22 percent

Materials.....17 percent

Equipment.....17 percent

- E. Partial Payment: So long as the work contracted for is prosecuted in accordance with the provisions of this Contract, the Contractor will within the last five (5) days of each calendar month, submit a pay estimate with the proportionate value of the work done and of material furnished or delivered upon the site of the work up to the

25th of that month. The Contractor's estimate of work accomplished will be evaluated and verified by the County for payment submittal.

The amount of said estimate, after deducting five percent (5%) and all previous payments, shall be due and payable to the Contractor not more than fifteen (15) days after the last day of said month. The five percent (5%) deducted shall be withheld by the county to insure faithful completion of the work under the terms of the Contract documents and to provide a fund for the payment of any claims, which may accrue against the County because of some act or omission on the part of the Contractor.

Nothing contained in this article shall be construed to affect the right, hereby reserved, to reject the whole or any part of the aforesaid work, should such work be later found not to comply with any of the provisions of the Contract documents. Payments that have been made are subject to review and correction on the final estimate.

- F. Final Payment: The Contractor shall notify the County when work is considered completed and the Engineer or Project Manager shall within fifteen (15) days, after receiving the notice, schedule a final inspection with the Contractor to determine whether there is work yet to be performed. After completion and acceptance by the County, the Contractor shall submit final payment request along with a signed Certification of Work of Completion that stipulates a release and waiver of all claims against the County arising from the contract and satisfactory evidence that all amounts due for labor, materials and other obligations have been settled. The Engineer or Project Manager within 30 days will evaluate the final pay request and authorize payment. The County shall pay the entire sum found to be due after deducting all previous payments and release all retainage due.