

EXHIBIT A

NORTH CLACKAMAS SCHOOL DISTRICT

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

February 2018 Edition

TABLE OF SECTIONS

| | | | |
|-----|-----------------------------------|-----|---|
| 101 | DEFINITIONS AND ABBREVIATIONS | | |
| 102 | INSTRUCTIONS REGARDING BIDDING | 107 | LEGAL RELATIONS AND RESPONSIBILITIES |
| 103 | RESERVED FOR EXPANSION | 108 | PROSECUTION AND PROGRESS OF WORK |
| 104 | SCOPE OF WORK | 109 | PAYMENT |
| 105 | CONTROL OF WORK | 110 | BACKGROUND CHECKS AND BADGING |
| 106 | CONTROL OF MATERIAL | 111 | ENVIRONMENTAL HEALTH AND SAFETY PROCESS AND PROCEDURES |

TABLE OF CONTENTS

| | Page |
|--|------|
| 101 DEFINITIONS AND ABBREVIATIONS | 1 |
| 101.01 DEFINITIONS..... | 1 |
| 101.02 ABBREVIATIONS | 9 |
| 102 INSTRUCTIONS REGARDING BIDDING | 11 |
| 102.01 EXAMINATION OF CONTRACT, SITE OF WORK, AND SUBSURFACE DATA | 11 |
| 102.02 AMOUNT OF WORK TO BE DONE | 12 |
| 102.03 ASSIGNMENT OF ANTITRUST RIGHTS | 12 |
| 102.04 COMPLIANCE WITH M/W/ESB PROGRAMS | 13 |
| 102.05 AWARD OF CONTRACT | 13 |
| 102.06 BIDDING BASED ON CONTRACT DOCUMENTS | 13 |
| 102.07 INSURANCE..... | 13 |
| 103 RESERVED FOR EXPANSION | 13 |
| 104 SCOPE OF WORK | 13 |
| 104.01 PLANS AND SPECIFICATIONS | 13 |
| 104.02 RESERVED FOR EXPANSION | 13 |
| 104.03 SHOP DRAWINGS AND OTHER SUBMITTALS..... | 13 |
| 104.04 EXTRA WORK AND CHANGES | 16 |
| 104.05 DIFFERING SITE CONDITIONS..... | 17 |
| 105 CONTROL OF WORK | 18 |
| 105.01 AUTHORITY OF THE OWNER'S REPRESENTATIVE | 18 |
| 105.02 USE OF ARCHITECT, ENGINEER, OR PROJECT MANAGER AS OWNER'S REPRESENTATIVE | 18 |
| 105.03 AUTHORITY OF ASSISTANTS AND INSPECTORS..... | 19 |
| 105.04 CONTRACTOR'S RESPONSIBILITY FOR WORK | 20 |
| 105.05 NOTIFICATION OF UTILITIES AND AGENCIES FOR EXCAVATION | 20 |
| 105.06 NOTIFICATION OF UTILITIES AND AGENCIES FOR STREET CLOSURE | 21 |
| 105.07 ACTIONS REGARDING EXISTING IMPROVEMENTS AND UTILITIES | 21 |
| 105.08-105.09 RESERVED FOR EXPANSION | 22 |
| 105.10 PROTECTION AND RESTORATION OF PROPERTY | 22 |

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| 105.11 USE OF WORK DURING CONSTRUCTION | 23 |
| 105.12 FURNISHING TEMPORARY SERVICES AND FACILITIES..... | 23 |
| 105.13 WATER AND POLLUTION CONTROL | 23 |
| 105.14 NOISE..... | 24 |
| 105.15 ACCESS TO THE WORK..... | 24 |
| 105.16 DEFECTIVE OR UNAUTHORIZED WORK | 24 |
| 105.17 HAZARDOUS SUBSTANCES ENCOUNTERED DURING CONSTRUCTION AND OTHER ENVIRONMENTAL LAWS..... | 25 |
| 105.18 DOCUMENTS..... | 27 |
| 106 CONTROL OF MATERIAL..... | 27 |
| 106.01 CONTRACTOR-FURNISHED MATERIALS AND SOURCES | 27 |
| 106.02 QUALITY OF MATERIALS, PARTS, PRODUCTS, AND EQUIPMENT..... | 27 |
| 106.03 RELATIONSHIP TO SUBMITTALS | 28 |
| 106.04 CERTIFICATIONS AND CONFORMANCE DOCUMENTS..... | 28 |
| 106.05 SAMPLING AND TESTING OF PRODUCTS..... | 29 |
| 106.06 STORAGE AND PROTECTION OF ITEMS OF WORK | 30 |
| 106.07 TRADE NAMES, EQUALS, AND SUBSTITUTIONS..... | 30 |
| 106.08 PRECONSTRUCTION RECYCLING PLAN..... | 30 |
| 107 LEGAL RELATIONS AND RESPONSIBILITIES..... | 31 |
| 107.01 LAWS AND REGULATIONS..... | 31 |
| 107.02 SUBCONTRACTORS | 31 |
| 107.03 NO WAIVER OF LEGAL RIGHTS | 31 |
| 107.04 NO THIRD-PARTY BENEFICIARY TO THE CONTRACT | 32 |
| 107.05 OTHER CONTRACTS | 32 |
| 107.06 LIABILITY AND INDEMNIFICATION | 33 |
| 107.07 ROYALTIES AND PATENTS | 33 |
| 107.08 PERMITS..... | 34 |
| 107.09 LABOR..... | 34 |
| 107.10 RESERVED FOR EXPANSION | 34 |
| 107.11 PUBLIC SAFETY AND CONVENIENCE | 34 |

TABLE OF CONTENTS
(continued)

| | Page |
|---|-------------|
| 107.12 RIGHTS-OF-WAY, EASEMENTS, AND PREMISES | 35 |
| 107.13 TWO-YEAR MAINTENANCE AND WARRANTY | 36 |
| 107.14 HAZARDOUS COMMUNICATIONS PROGRAM COMPLIANCE | 36 |
| 107.15 PROTECTION OF CULTURAL RESOURCES | 37 |
| 107.16 INDEPENDENT CONTRACTOR STATUS..... | 37 |
| 107.17 TRESPASS | 37 |
| 108 PROSECUTION AND PROGRESS OF WORK | 38 |
| 108.01 CONTRACTOR'S CONSTRUCTION SCHEDULE..... | 38 |
| 108.02 MEETINGS | 39 |
| 108.03 NOTICE TO PROCEED | 40 |
| 108.04 CONTRACT TIME | 41 |
| 108.05 ADJUSTMENTS TO CONTRACT TIME | 41 |
| 108.06 REMEDIES FOR DELAY | 43 |
| 108.07 SUSPENSION OF WORK..... | 44 |
| 108.08 SUPERVISION..... | 44 |
| 108.09 USE OF PLANS AND SPECIFICATIONS..... | 44 |
| 108.10 OWNER'S RIGHT TO PERFORM OR DELETE WORK..... | 45 |
| 108.11 TERMINATION FOR DEFAULT..... | 45 |
| 108.12 TERMINATION FOR CONVENIENCE..... | 46 |
| 108.13 SUBCONTRACTOR TERMINATION CLAIMS..... | 48 |
| 109 PAYMENT | 49 |
| 109.01 RESERVED FOR EXPANSION | 49 |
| 109.02 COMPENSATION | 49 |
| 109.03 OTHER CHANGES TO COMPENSATION..... | 49 |
| 109.04 LETTERS OF AUTHORIZATION (LOA)..... | 49 |
| 109.05 CONSTRUCTION CHANGE DIRECTIVES (CCD)..... | 50 |
| 109.06 FIELD ORDERS | 50 |
| 109.07 ARCHITECT'S SUPPLEMENTAL INSTRUCTIONS | 50 |
| 109.08 CHANGE ORDER REQUESTS AND COMMUNICATION REGARDING THE WORK..... | 51 |

TABLE OF CONTENTS
(continued)

| | Page |
|---|-------------|
| 109.09-109.15 RESERVED FOR EXPANSION | 52 |
| 109.16 CHANGE ORDERS | 52 |
| 109.17 CLAIMS FOR ADDITIONAL COMPENSATION, REQUESTS FOR ADDITIONAL TIME, AND REQUIRED NOTIFICATION | 52 |
| 109.18 RECORDS | 55 |
| 109.19 PARTIAL OCCUPANCY OR USE | 56 |
| 109.20 PAYMENTS AND RETAINAGE | 57 |
| 109.21 COMPLETION AND FINAL PAYMENT | 60 |
| 109.22 LITIGATION | 63 |
| 110 BACKGROUND CHECKS AND BADGING | 63 |
| 111 ENVIRONMENTAL HEALTH AND SAFETY PROCESS AND PROCEDURES | 65 |

101 DEFINITIONS AND ABBREVIATIONS

101.01 DEFINITIONS

Acceptance of the Work

Signifies that the Work has been completed to the Owner's satisfaction and occurs when the Owner approves the Certificate of Completion executed by the Contractor.

Act of God

A phenomenon of nature of catastrophic proportions or intensity, such as an earthquake, flood, cloudburst, tornado, or hurricane.

Addenda

Additions or deletions to, material changes in, or general-interest explanations of, the District's Solicitation Documents.

Allowance

A number that represents the maximum amount paid by the Owner for a specifically identified portion of the Work, such as materials, labor, or both, even if such items have not been quantified in the Contract Documents. All allowances will be deemed to be included in the original Contract Amount and must be listed in a Schedule of Values, if any.

Application for Payment

A written request for payment based on an estimate of work performed that is submitted by the Contractor to the Owner's Representative, accompanied by such supporting documentation as is required by the Contract Documents.

Architect

The person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Contract Documents and referred to throughout the Contract Documents as if singular in number. The term "Architect" refers to the Architect or the Architect's authorized representative.

Architect's Supplemental Instructions ("ASI")

Information provided to the Contractor by the Architect regarding the Project that does not involve a change in the Contract Amount or Contract Time or scope.

As-Built Drawings ("As-Builts")

Drawings showing how the Project has been constructed.

Award

The decision of the District to execute a Contract with a particular Bidder or Proposer.

Bid

A competitive offer binding on the Bidder and submitted in response to an Invitation to Bid.

Bid Documents

Those documents on which a Bidder bases its Bid to the Owner, which include, but are not limited to, the Instructions to Bidders, the Proposal, the proposed Contract Documents (including the Specifications, Plans, Addenda issued prior to Bid opening, and Permits and other documents included in the Specifications by specific reference), and any other documents that may be designated therein as part of the Bid Documents.

Bidder

Any person who submits a Bid in response to the District's Invitation to Bid.

Board

The District Board of Directors.

Bonds

Documents issued by third parties that provide financial protection to the Owner if the Bidder fails to either enter into a Contract ("Bid Bond") or perform the Work as required by the Contract Documents ("Payment and Performance Bonds").

Calendar Day

A calendar day, beginning at midnight and ending at midnight 24 hours later unless otherwise specified by a more specific provision of the Contract Documents. Calendar Days include weekdays, weekends, and holidays.

Certificate of Completion

A document that may be provided by the Owner that requires the Contractor to certify that the Work has been satisfactorily completed, if the Contract Documents require one.

Certificate of Occupancy ("C of O")/Certificate of Final Inspection

A document provided by a regulatory agency that authorizes partial or full occupancy of a building or structure.

Change Order ("CO")

A written order issued by the Owner's Representative to the Contractor modifying work required by the Contract and establishing the basis of payment for the modified work.

Change Order Request ("COR")

A written form prepared by the Contractor proposing a Change Order, which must show whether the change will increase or decrease the Contract Amount or Contract Time, and must include all documentation necessary to support the request.

Claim

A request by a Contractor for additional compensation, Contract Time, or both that is prepared and submitted to the Owner's Representative in strict conformance with Contract requirements regarding Claims and Notice of Claims.

Claims Package

Documents required to be submitted to substantiate a Contractor's right to, and the amount of, additional compensation.

Construction Change Directive ("CCD")

A written statement prepared by the Owner's Representative directing that the Work be changed if the Owner and the Contractor have not reached agreement regarding the effect of the changes on the Contract Time or Contract Amount.

Construction Schedule

Schedule provided by the Contractor to the Owner, as required by the Contract, which does not exceed the Contract Time, relates to the entire Project, and provides for the expeditious and practical execution of the Work.

Contract

Synonymous with "Contract Documents."

Contract Amount

The authorized amount of money to be paid to the Contractor for performing the Work.

Contract Documents

The written agreement between the Owner and the Contractor that defines the obligations of the Contractor and the Owner regarding the Work to be performed. The Contract Documents include, but are not limited to, the advertisement for Bids, the invitation for Bids, Plans, the General Conditions of the Contract for Construction, Special Specifications, Addenda, Change Orders, and any other documents that may be referenced therein as part of the Contract.

Contract Pay Items

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

Contract Time

The amount of time stated in the Contract Documents for performance of all the Work, or any specified portion thereof, as modified by any authorized Change Order.

Contractor

Any person who has entered into a Contract with the Owner for the Work. "Contractor" includes a Construction Manager/General Contractor and that Construction Manager/General Contractor alternative form of procurement.

Day

Calendar Day.

Defective Work

Work that (a) is performed in an unsatisfactory, faulty, or deficient manner; (b) does not conform to the Contract Documents; (c) does not meet the requirements of any reference standard, test, or approval referred to or incorporated by the Contract Documents; or (d) has been damaged by anyone other than the Owner prior to Acceptance of the Work, whether or not such Work is in the Owner's possession or use.

District

North Clackamas School District No. 12.

Easement

The right to use a defined area of property for a specific purpose or purposes.

Engineer

A person holding an engineering license who is also authorized to act as the Owner's Representative.

Environmental Laws

Any applicable statute, law, ordinance, order, consent decree, judgment, Permit, license, code provision, covenant deed, common law, treaty, convention, or other requirement pertaining to protection of the environment, health or safety, natural resources, conservation, wildlife, waste management, or disposal of Hazardous Substances or pollution, including, but not limited to, regulation of releases to air, land, water, and groundwater.

Equal

A substitute for a product, component, or process when use in or on a particular Project is specified. The "Equal" substitute must be the same as or better than that named in features, function, performance, quality, reliability, utility, value, and suitability for the particular use.

Equitable Adjustment

A term used to describe a change in the Contract Amount, Contract Time, or both when the Contract Documents authorize such a change.

Extra Work

An item of work not provided for in the Contract as awarded, but ordered, in writing, by the Owner's Representative as essential to the proper completion of the Contract within its intended scope.

Final Payment

The last progress payment made to the Contractor for earned funds, if any, plus withheld Retainage, less deductions permitted or required by the Contract.

Final Completion

Full performance of all the Work and acceptance of the Project by the Owner.

General Conditions of the Contract for Construction

The terms, directions, provisions, and requirements set forth in the North Clackamas School District General Conditions of the Contract for Construction in effect at the time of the Bid.

Hazardous Materials

Hazardous Materials are any substance defined or designated as being radioactive, infectious, hazardous, dangerous, or toxic by any federal, state, or local statute, regulation, or ordinance presently in effect or subsequently enacted. For purposes of Section 105.17, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project site regardless of whether the Hazardous Material was specified, required, or otherwise addressed in the Contract Documents.

Incidental Work

Work that is necessary for fulfillment of the Contract, but that may not be listed as a Contract Pay Item and for which no separate or additional payment is made.

Inspector

An employee or representative of the Owner authorized to inspect and report on some aspects of Contract performance. Inspectors are distinguished from Regulatory Inspectors (defined below).

Instructions to Bidders

The instructions issued by the Owner to persons submitting Bids contained in the Invitation to Bid.

Interfacing Work

That portion of the Work that connects to, abuts, or meets with work of another Contractor, which may require cooperation between the two Contractors in order that the Work may be successfully completed.

Invitation to Bid ("ITB")

A competitive solicitation process of the Owner whereby a Contract is awarded based on the lowest responsible and responsive Bid.

Landscape Architect

A person duly licensed to practice landscape architecture or an entity lawfully practicing landscape architecture identified as such in the Contract Documents and referenced throughout as if singular in number. The term "Landscape Architect" refers to the Landscape Architect or the Landscape Architect's authorized representative.

Law

Any federal, state, or local law, ordinance, code, regulation, or rule.

Letter of Authorization ("LOA")

The Owner's written authorization to the Contractor authorizing expenditures, bid awards, and use of contingency funds.

Lump Sum

A way of expressing the Contract Amount for the Work, or the price bid for a portion of the Work, stated as a single price for all labor, materials, supplies, Incidental Work, overhead, and profit without any breakdown into its component parts. For the purposes of these General Conditions, a contract with a guaranteed maximum price (GMP) is considered a lump sum contract.

MBE/WBE/ESB ("M/W/ESB")

Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses, certified as such by the State of Oregon Office of Minority, Women, and Emerging Small Business.

Mobilization

Necessary actions taken by the Contractor to begin the Work, such as the establishment of temporary facilities, equipment, and personnel at the worksite.

Notice

A written communication delivered by hand or by mail to an individual, employee, agent, official, or officer of the Owner or the Contractor authorized to receive notice, as set forth in the Contract Documents or as prescribed by law. Communications sent by fax are not considered to be adequate notice unless a copy of the original is mailed to the Owner.

Notice to Proceed

Written Notice issued by the Owner's Representative to the Contractor authorizing the Contractor to proceed with all or part of the Work.

Owner

The District.

Owner's Representative

An employee acting on behalf of the Owner who has authority to make decisions regarding the Work and the Contract, except to the extent that Board approval is required by the District's enabling statute or administrative rule. The Owner's Representative is designated in writing by the Owner's Director of Facilities and Asset Management. The Owner's Representative can be the Director, another officer or employee of the Owner, the Owner's Construction Manager or other consultant, the Architect, the Engineer, or such other person as the Owner's Director of Facilities and Asset Management may determine.

Parties

The Owner and the Contractor who are signators to the Contract.

Performance Bond and Payment Bond

Documents issued by a Surety that promise, in general, that (a) the Work will be completed and performed in accordance with the Contract Documents and (b) all persons supplying labor or materials for the Project will be paid in the event of a Contractor default.

Permit

Written authorization to do specific work issued by the City of Milwaukie, Clackamas County or other outside agency having statutory or proprietary jurisdiction over portions of the Work.

Person

An individual, firm, partnership, joint venture, corporation, limited liability company, joint stock company, or association.

Plans

The Project-specific official Plans, profiles, cross-sections, elevations, details, and other working, supplementary, and detail drawings, or reproductions, stamped by a person licensed to do the same, that show the location, character, dimensions, and details of the work to be performed. Plans may be either bound in the same book as the balance of the Contract Documents or bound in separate sets, and are a part of the Contract Documents.

Prequalification

A process by which Bidders become eligible to submit Bids.

Project

General term encompassing all phases of the Work to be performed under the Contract and is synonymous with the terms "improvement" and "Work."

Project Manager

The authorized representative of the Owner's Representative assigned to administer the Contract executed by the Contractor, unless the Contract specifies otherwise.

Proposal

A binding offer to enter into a Contract with the Owner and submitted in response to a Request for Proposals.

Proposal Request ("PR")

A written request from the Owner's Representative or the Architect to the Contractor for information as to how a proposed change to the Work would affect the Contract Amount and Contract Time.

Proposer

A person who submits a Proposal in response to a Request for Proposals.

Provide

When related to an item or part of the Work, understood to mean "furnish and install the Work complete and in place."

Purchasing Agent

The Owner's Director of Procurement or Deputy Clerk, or such other person as properly designated by the Board or the Owner's Superintendent.

Purchasing Rules

Those rules adopted by the Board that govern purchasing of goods, services, and materials found in the District's Contracting and Purchasing Manual adopted pursuant to Policy 8.50.100-P.

Reference Specifications

Bulletins, standards, rules, methods of analysis or testing, codes, and Specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents that when included in the Contract Documents establish the basis by which specific portions of the Work are to be performed. All such references specified refer to the latest edition thereof, including any amendments in effect and published at the time of advertising for Bids or of issuing the Permit for the Project.

Regulatory Inspectors

Persons employed by regulatory bodies such as the City of Milwaukie or Clackamas County Building Codes Division who have authority to determine whether work performed by the Contractor has been performed according to the regulations and codes applicable to that portion of the Work (electrical, plumbing, etc.).

Release

A term that, when used in regard to environmental regulations, has the meaning ascribed to it by Oregon law.

Request for Information ("RFI")

A form approved for use by the Owner's Representative that the Contractor uses to request information, and on which the Owner's Representative's response will be returned.

Request for Proposals ("RFP")

A competitive solicitation process of the Owner whereby the Contract is awarded based on factors other than or in addition to price to the responsible Proposer whose Proposal is determined by the Owner to be the most advantageous to the District.

Retainage

The difference between the amount earned by the Contractor and the amount paid on the Contract by the Owner.

Right-of-Way

A general term denoting public land, property, or interest therein, acquired for or devoted to a public

street, public access, or public use.

Roadway

That portion of a street or highway improved, designed, or ordinarily used for vehicular travel, including its appurtenances between curbs, gutters, or ditches, but exclusive of the berm or shoulder.

Schedule of Values

A general itemization of work to be performed accompanied by an associated cost that is sometimes required when the Work, or a portion of the Work, has been priced on a Lump-Sum basis. The Schedule of Values will be the sum of the approved LOAs. When accepted by the Owner, the Schedule of Values determines how much money the Contractor is entitled to receive for work performed in a given time period based on its progress in completing the items of work listed.

Shown

A term that, as used herein, refers to work shown, indicated, or described on the Plans in the Contract that can be reasonably inferred to belong to the item of Work described or indicated and that is required by good practice to provide a complete and satisfactory system or structure.

Solicitation Document

Any document that requests submission of a Bid or Proposal or other offer to the District to enter into a Contract. All documents referenced by the Solicitation Document are included in the Solicitation Document.

Special Provisions or Special Specifications

A portion of the Contract Documents that typically applies to a specific Project that may modify the General Conditions of the Contract for Construction, impose additional requirements applicable to a specific Project, or both.

Specifications

Contract Documents that describe the Work, including any Reference Specifications incorporated therein.

Specified

A term that, as used herein, means "as required by the Contract."

Standard Plans and Drawings

Standard details of structures, devices, or instructions adopted by the Owner and in force at the time of the Bid as a standard and referred to by the Contract.

Station

A distance of 100 feet measured horizontally along the established centerline of a street, sewer, or other work, unless specified otherwise.

Street

Any public Right-of-Way, whether improved or unimproved, including, but not limited to, an avenue, boulevard, alley, lane, bridge, bicycle path, road, public thoroughfare, or public way and any land over which a Right-of-Way has been obtained or granted for any purpose of public travel.

Subcontractor

An individual, partnership, firm, corporation, or any combination thereof, with whom the Contractor enters into a subcontract to perform a part of the Work.

Substantial Completion

A state of Contract performance that is less than full performance of all the work required by the Contract Documents, but is nonetheless sufficiently complete to permit lawful occupancy or use of the Project for its intended purpose.

Surety

The entity providing a Bid Bond, Performance Bond, Payment Bond, Warranty, or Maintenance Bond, or any combination thereof.

Technical Specifications

Requirements of a technical nature particular to the Project and included in the Specifications.

Ton

The short ton of 2,000 pounds avoirdupois.

Unit Price

The dollar amount Bid to do a particular portion of Contract work when such prices are required by the Bid Documents. In some cases, unit prices are used in order to determine the lowest responsive and responsible Bidder.

Utility

A line, facility, or system for producing, transmitting, or distributing communications, power, electric, heat, gas, oil, water, steam, waste, stormwater not connected with highway drainage, or any other similar commodity that directly or indirectly services the public. The term "utility" also means the utility company, district, or cooperative, including any wholly owned or controlled subsidiary thereof, that provides utility services.

Work

All material, labor, tools, equipment, appliances, machinery, systems, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described that can be reasonably inferred to belong to the item described or indicated and as required by good practice to provide a complete, functioning, and satisfactory system or structure.

Working Day

Any and every day shown on the calendar, excluding Saturdays, Sundays, and District legal holidays, synonymous with "workday."

101.02 ABBREVIATIONS

| | |
|--------|--|
| AAN | American Association of Nurserymen |
| AASHTO | American Association of State Highway and Transportation Officials |
| ACI | American Concrete Institute |
| ADA | Americans With Disabilities Act |
| AGA | American Gas Association |
| 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 |
| CABO | Council of American Building Officials |
| CFR | Code of Federal Regulations |
| CRSI | Concrete Reinforced Steel Institute |
| CSI | Construction Standards Institute |
| DEQ | Department of Environmental Quality |
| EPA | Environmental Protection Agency |
| FHWA | Federal Highway Administration |
| ITE | Institute of Traffic Engineers |
| MUTCD | Manual of Uniform Traffic Control Devices for Streets and Highways, FHWA, U.S. Department of Transportation |
| NACE | National Association of Corrosion Engineers |
| NEC | National Electrical Code |
| NEMA | National Electrical Manufacturers Association |
| NFPA | National Fire Protection Association |
| NLMA | National Lumber Manufacturers Association |
| NMFS | National Marine Fisheries Services, a part of the National Oceanic and Atmospheric Administration |
| NSF | National Sanitation Federation |
| NUCA | National Underground Contractors Association |
| OAR | Oregon Administrative Rules |
| ODFW | Oregon Department of Fish and Wildlife |
| ODOT | Oregon Department of Transportation |
| ORS | Oregon Revised Statutes |
| OR-OSHA | Oregon Occupational Safety and Health Division |
| OSHA | Occupational Safety and Health Administration (Federal) |
| OSHD | Oregon State Highway Division |
| PCA | Portland Cement Association |
| PDOT | Portland Department of Transportation |
| PUC | Public Utility Commission |
| SMACNA | Sheet Metal and Air Conditioning Contractors National Association |
| UBC | Uniform Building Code |
| UFC | Uniform Fire Code |
| UL | Underwriters Laboratories, Inc. |
| UMC | Uniform Mechanical Code |

| | |
|-------|--|
| USASI | United States of America Standards Institute |
| USC | United States Code |
| WEF | Water Environment Foundation |
| WWPA | Western Wood Products Association |

102.07 INSURANCE

Insurance is to be as set forth in the Contract.

103 RESERVED FOR EXPANSION

104 SCOPE OF WORK

104.01 PLANS AND SPECIFICATIONS

- A. The Contract Documents govern the Work to be done, set forth the relative responsibilities of the Owner and the Contractor, and establish the method by which changes in the Contract are made.
- B. Some details of the Work may be found in only one location in the Contract Documents. Therefore, the Contractor will review all portions of the Contract Documents in order to know the full scope of Work.
- C. The Owner has adopted General Conditions of the Contract for Construction. Any reference to a Standard Plan or General Conditions of the Contract for Construction in this Contract is to the ones in effect at the time the Contract was advertised. If, after the Contract is executed, the Contractor has any question regarding the applicability of the Plans or General Conditions of the Contract for Construction, the Contractor will contact the Owner's Representative for clarification.
- D. Unless otherwise defined in the Contract Documents, words which have commonly understood technical or construction industry meanings shall be so construed. The Contract Documents are intended to be complimentary and terms shall be construed consistently throughout. In the event of conflicts or discrepancies, such conflicts or discrepancies shall be resolved based upon the following descending order of precedence.
 - 1. The Contract, including contract amendments and change orders, with those of later date taking precedence over those of an earlier date;
 - 2. The Supplemental General Conditions;
 - 3. The General Conditions;
 - 4. The Specifications;
 - 5. The Plans;
 - 6. The Solicitation documents, including addenda;
 - 7. The accepted Offer.

- E. In the case of any inconsistency between the Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner's written interpretation.

104.02 RESERVED FOR EXPANSION

104.03 SHOP DRAWINGS AND OTHER SUBMITTALS

- A. For purposes of this subsection, the following definitions apply:
1. "Shop Drawings" are drawings, diagrams, schedules, and other data specifically prepared for the Work by the Contractor, a Subcontractor of any tier, manufacturer, supplier, or distributor to illustrate some portion of the Work.
 2. "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
 3. "Samples" are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
 4. "Submittals" are documents required by the Contract to be submitted to the Owner for review, but they are not part of the terms and conditions of the Contract. They may include Shop Drawings, Product Data, Samples, or a schedule of construction events.
- B. Shop Drawings, Product Data, Samples, and other Submittals are not part of the Contract. Their purpose is to demonstrate, for those portions of the Work for which Submittals are required, the way the Contractor proposes to conform to the requirements of the Contract and the design concept expressed in the Contract.
- C. The Contractor will review, approve, and submit to the Owner all Shop Drawings, Product Data, Samples, and other Submittals required by the Contract regardless of whether the document originated with the Contractor or with some other Subcontractor or supplier. They will be submitted at the time required by the Contract, or, if no time is specified, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate Contractors. Submittals made by the Contractor that are not required by the Contract may be returned without action or may not be returned at all.
- D. Informational Submittals that do not require the Owner to take responsive action may be so identified in the Contract.
- E. The Contractor will provide electronic copies of any Submittal required by the Contract or when requested by the Owner's Representative. In addition, the Contract may also require the Contractor to provide information about the products and materials it proposes to incorporate into the Work and to provide samples of such products and materials for inspection or testing. The Contractor is to be responsible for all Submittals presented to the Owner for review, no matter what their point of origin may have been.
- F. The Contractor may not perform a portion of the Work that requires the Owner to review a Submittal until the respective Submittal has been reviewed by the Owner as outlined below. Such

work is to be performed in accordance with Submittals that conform to the Contract Documents.

- G. When tendering a Submittal to the Owner for review, the Contractor represents that it has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained in such Submittals with the requirements of the Work and of the Contract. The Contractor is to expressly note where any Submittal differs from or varies from the requirements of the Contract, notwithstanding any belief on the part of the Contractor that the variance is obvious.
- H. The Owner's review of any Submittal does not relieve the Contractor from its responsibility to follow the requirements of the Contract. The Owner is not responsible for ensuring that Submittals are correct. Failure of the Owner to discover that a Submittal varies from the requirements of the Contract Documents does not relieve the Contractor of its responsibilities to conform to the Contract or provide a basis for a Change Order. Nevertheless, the Owner's Representative will review any Submittals provided in order to make a general determination about whether they appear to meet Contract requirements or the intended design of the Project. The Contractor remains responsible for following the Contract, including, but not limited to:
1. Confirming and correlating all dimensions;
 2. Conforming to specified fabricating and construction techniques;
 3. Coordinating the work with that of all other trades and Subcontractors;
 4. Satisfactorily performing the Work in strict accordance with the Contract Documents; and
 5. Following the prescribed means and methods of construction.
- I. The Owner's Representative has 14 days to review any Submittals, unless a different time is established elsewhere. The Owner's Representative will review the Submittals and return each of them to the Contractor stamped with one of the following notations:
1. "NO EXCEPTIONS TAKEN": If the Submittal is marked "NO EXCEPTIONS TAKEN," this means that the Contractor can immediately begin the work encompassed by the Submittal.
 2. "MAKE CORRECTIONS NOTED": If the Submittal is marked "MAKE CORRECTIONS NOTED," the Contractor is required to make any revisions suggested by the Owner's Representative and, on correction, may immediately begin the work indicated by the Submittal or may incorporate the material or equipment covered by the Submittal into the Work.
 3. "REVISE AND RESUBMIT": If the Submittal is marked "REVISE AND RESUBMIT," the Contractor is required to revise the Submittal and resubmit it to the Owner's Representative. No work that is shown on the Submittal, or that is dependent on approval of the Submittal or material or equipment covered by the Submittal, may be incorporated into the Work until the Contractor has made the necessary revisions, resubmitted the Submittal, and received the Submittal back marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED."
 4. "REJECTED": If the Submittal is marked "REJECTED," it means that the Owner's

Representative has found the Submittal, material, or product data to be unacceptable and not in conformance with the Contract. Generally speaking, rejection of a Submittal simply indicates the Owner's Representative's belief that the defects in the Submittal are so great that it cannot be revised in order to make it conform to the Contract, as indicated in subparagraph I(3) above. The Contractor may not begin work indicated by the Submittal, nor incorporate material or equipment, nor proceed with Work dependent on review of the Submittal, into the Work based on any Submittal, product data, or material that has been marked "REJECTED."

5. "SUBMIT SPECIFIED ITEM": If the Submittal is returned marked "SUBMIT SPECIFIED ITEM," it means that additional information is required to permit a full review. Work may begin on incorporating the material or equipment covered by the Submittal into the Work only if it is not affected by the item to be submitted. But if any material or equipment is affected by the item to be submitted, then no Work may begin until the Submittal is resubmitted and returned marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED."
- J. The following rules about Contract Time apply to Submittals. Contract Time will not be extended if:
1. The Contractor's delay resulted from the District's use of the full amount of allotted time under the Contract to review the Contractor's Submittal;
 2. The Contractor's delay resulted from its own failure to provide a Submittal in a timely manner;
 3. The Contractor's delay resulted from a Submittal that was properly marked "Revise and Resubmit," "Rejected," or "Submit Specified Item"; or
 4. The Contractor did not understand what it was required to submit and failed to inquire about it in a timely manner.
- K. If the Contractor disagrees with the District's review of its Submittal and the District's action has the potential of increasing the Contractor's costs, the Contractor will proceed as required by subsection 109.17.
- L. The Contractor will keep a current schedule and list of Submittals available for the Owner's Representative review and approval. The schedule and list shall be coordinated with the Contractor's construction schedule and allow the Owner's representative reasonable time to review submittals.

104.04 EXTRA WORK AND CHANGES

- A. The Owner and the Contractor mutually agree that changes in Plans, quantities, or details of the Work are inherent in the nature of construction and may be necessary or desirable. Therefore, without impairing the Contract, the Owner reserves the right to require changes determined necessary or desirable to complete the proposed construction within the general scope of the Work provided for in the Contract or to order Extra Work if that is required. Performance of changed or Extra Work will not invalidate the Contract or release the Contractor's Surety from its obligations. Changes to the Contract Amount, if any, as a result of the performance of changed or Extra Work must be made pursuant to subsection 109.04.

- B. The Owner may at any time, by written order, require the Contractor to perform changed or Extra Work. The Owner's Representative will provide Notice of such order to the Surety if the cost of the changed or Extra Work exceeds 25 percent of the total original Contract Amount.
- C. When so ordered in writing by the Owner's Representative, the Contractor will proceed with the performance of any changed or Extra Work regardless of whether Contract Amount or Contract Time has been agreed on. If the Contractor refuses to perform the changed or Extra Work, this is a material breach of the Contract and the Owner will have all remedies available to it at law and in equity for that breach. The Contractor will have no right to additional Contract Time for delay incurred by the Contractor's refusal to perform because either the price or the time, or both, has not yet been agreed on. The Contractor's remedy is, instead, to proceed as required by subsection 109.17.
- D. When the Owner's Representative is contemplating changed or Extra Work, a Notice of the proposed changed or Extra Work, together with a solicitation for a quotation for the performance of the changed or Extra Work, is to be issued to the Contractor, in writing, by the Owner's Representative.
 - 1. The Contractor will submit a price quotation and Proposal for performing the changed or Extra Work within ten days unless the Owner agrees on a longer period of time in writing. The Contractor must submit data to substantiate both the cost of performing the Extra Work and any additional Contract Time that may be requested.
 - 2. The Contractor's delay in submitting a price quotation and Proposal does not, in and of itself, extend the Contract Time. If the Contractor is unable to prove that the changed or Extra Work will cost it additional money or is unable to substantiate that it will take additional Contract Time, the Contractor has waived any Claim it might have to either Contract Time or additional money after the decision to proceed with the Work has been made by the Owner and communicated to the Contractor.

104.05 DIFFERING SITE CONDITIONS

- A. The Contractor must promptly, and before the conditions are disturbed, give written Notice to the Owner's Representative of:
 - 1. Preexisting subsurface or latent physical conditions at the site that differ materially from those indicated in the Contract; or
 - 2. Preexisting unknown physical conditions at the site, of an unusual nature, that differ materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract.
- B. After receipt of the Notice, the Owner's Representative will promptly investigate the conditions encountered by the Contractor. If the Owner's Representative finds that the conditions are materially different and cause a material increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under the Contract, whether or not changed as a result of the conditions, an Equitable Adjustment to the Contract will be made under this clause and the Contract modified in writing accordingly. If possible, the Owner and the Contractor are to agree on the adjustment to be made. If they are unable to agree, the Owner's Representative will determine the amount of the Equitable Adjustment and adjust the time to perform if appropriate. If the Owner's Representative finds that differing site conditions do not exist, that

decision is final and binding on the Contractor.

- C. The Contractor has waived its right to bring a Claim for additional compensation or Contract Time for encountering a differing site condition unless the Contractor has given the Notice required by paragraph A above. No request by the Contractor for an Equitable Adjustment to the Contract as a result of a differing site condition will be allowed if the request is made after Final Payment under the Contract.

105 CONTROL OF WORK

105.01 AUTHORITY OF THE OWNER'S REPRESENTATIVE

The Work must be performed to the complete satisfaction of the Owner's Representative.

- A. The decision of the Owner's Representative will be final, binding, and conclusive on the Contractor on all questions that arise regarding the quantity of materials and work, the quality of materials and work, the acceptability of materials furnished and work performed, the acceptable rate of progress of the work, the interpretation of the Plans and Specifications, the measurement of all quantities, the acceptable fulfillment of the Contract on the part of the Contractor, and payments under the Contract.
- B. Work will not be considered completed until it has passed final inspection by the Owner's Representative and is accepted by the Owner. The authority of the Owner's Representative is such that the Contractor must at all times carry out and fulfill the instructions and directions of the Owner's Representative insofar as they concern the Work to be done under the Contract.
- C. If the Contractor fails to comply with any reasonable order made under the provisions of this subsection, the Owner's Representative may cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the costs thereof from any money due or to become due to the Contractor.
- D. The Owner's Representative has the authority to suspend work for cause as set forth in subsection 108.07.
- E. Nothing in this subsection or elsewhere in the Contract is to be construed as requiring the Owner's Representative to direct or advise the Contractor on the method or manner of performing any work under the Contract. No approval or advice as to the method or manner of performing or producing any materials to be furnished constitutes a representation or warranty by the Owner that the result of such method or manner will conform to the Contract, relieve the Contractor of any of the risks or obligations under the Contract, or create any liability to the Owner because of such approval or advice.
- F. An Architect, Engineer, designer, or other person hired by the Owner under a separate contract is not the Owner's Representative, unless the Contract Documents expressly state otherwise. The Contractor will be notified if the Owner's Representative has been changed.

105.02 USE OF ARCHITECT, ENGINEER, OR PROJECT MANAGER AS THE OWNER'S REPRESENTATIVE

- A. The Owner may choose to have a consulting Architect, Engineer, or Project Manager who is not a District employee administer this Contract and, if so, may so notify the Contractor. When that occurs, the Architect, Engineer, or Project Manager is the Owner's Representative for purposes of this Contract and has the Owner's Representative's rights and responsibilities outlined in subsection 105.01, unless specifically modified by other portions of the Contract Documents. The Owner has the right to review the Architect's, Engineer's, or Project Manager's work and recommendations, including recommendations for payment, and may accept or reject the Architect's, Engineer's, or Project Manager's advice.

- B. Any drawings, Specifications, and other documents prepared by the Architect or Engineer are instruments of the Architect's or Engineer's service through which the Work to be executed by the Contractor is described. The Contractor may retain one Contract record set and any other necessary copies. Neither the Contractor nor any Subcontractor, sub-Subcontractor, or material or equipment supplier may own or claim a copyright in the drawings, Specifications, and other documents prepared by the Architect or Engineer, and unless otherwise indicated, the Architect or Engineer is deemed to be the author of them and will retain all common-law, statutory, and other reserved rights, in addition to the copyright. The drawings, Specifications, and other documents prepared by the Architect or Engineer, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, sub-Subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect or Engineer. The Contractor, Subcontractors, sub-Subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the drawings, Specifications, and other documents prepared by the Architect or Engineer that are appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license must bear the statutory copyright notice, if any, shown on the drawings, Specifications, and other documents prepared by the Architect or Engineer. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Engineer's copyright or other reserved rights.
- C. Nothing in this subsection changes the Contractor's duties as outlined elsewhere in the Contract Documents. For example, the Architect's or Engineer's presence does not relieve the Contractor of performing the Work in accordance with the law, statutes, ordinances, or building codes, nor does it relieve the Contractor of the duty to obtain all required Permits.

105.03 AUTHORITY OF ASSISTANTS AND INSPECTORS

- A. The Owner's Representative may assign Inspectors, assistants, and other persons to advise the Owner whether the work and materials meet Contract requirements. Such determination may extend to any or all parts of the Work and to the preparation or manufacture of materials to be used.
- B. If assigned personnel discover defective materials or work not being performed safely or in accordance with Contract requirements, the Owner's Representative has the authority to reject the materials or to suspend the Work.
- C. Assigned personnel, including, but not limited to, Inspectors and assistants, are not authorized to approve or accept any portion of the Work, to accept materials, to issue instructions, or to give advice that is contrary to the Contract. Work done or material furnished that does not meet Contract requirements is at the Contractor's risk, and does not provide a basis for a Claim even if it is asserted that assigned personnel changed Contract requirements.
- D. If assigned personnel or the Owner's Representative fails to observe, call out, or note faulty work, defective materials, errors, or the Contractor's failure to comply with Contract requirements, that failure does not constitute acceptance or approval of that particular portion of the Work. If this occurs, the Contractor remains obligated to perform the Work in accordance with the Contract Documents, without additional compensation or Contract Time.
- E. The provisions of this subsection 105.03 do not apply to Regulatory Inspectors.

- F. If the Owner's Representative notes faulty work, defective materials, errors, or the Contractor's failure to comply with Contract requirements, it will notify the Contractor's Representative.

105.04 CONTRACTOR'S RESPONSIBILITY FOR WORK

- A. The Contractor will perform the Work as required by the Contract Documents, including, but not limited to, providing all labor, materials, equipment, tools, machines, and Incidental Work necessary for its performance. In addition, the Contractor is responsible for the means and methods of construction.
- B. Until the Work is completed and accepted by the Owner, the Contractor is responsible for any damage it causes to either permanent or temporary work, utilities, materials, plants, and equipment, all of which must be repaired to the satisfaction of the Owner's Representative at the Contractor's expense. Damage caused by vandals must be covered by the Contractor's insurance. Damage to any portion of the Work that has been completed and accepted by the Owner and that is open for public use is not the responsibility of the Contractor if caused by third persons, such as vandals.
- C. The Contractor must promptly repair any damage for which it is financially responsible. If the damage is something for which the Contractor is not financially responsible, the Owner's Representative may direct the Contractor to repair the damage with compensation established as follows:
 - 1. If the Contract was one that had Unit Prices established for performing the Work, the Contractor will be compensated at those Unit Prices.
 - 2. If the Contract, or a portion of the Contract, was one that used Lump Sum pricing, then the Owner and the Contractor will use the Schedule of Values.
- D. The Owner reserves the right to have any Work performed for which the Contractor is not financially responsible by its own forces or by hiring another contractor to perform the work.
- E. The Contractor must make sure its Work is in good condition to receive subsequent Work that may be performed by another contractor. See subsection 107.05.

105.05 NOTIFICATION OF UTILITIES AND AGENCIES FOR EXCAVATION

- A. The Contractor will follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in the Oregon Administrative Rules. Copies of these rules may be obtained by contacting the Center. If the Contractor has questions about the rules, it is to contact the Center. The Parties agree that any Project Plans or Permits issued by the Owner are deemed to have this language incorporated by reference.
- B. In addition to the notification required by paragraph A above, the Contractor will give Notice to the Owner of any intended excavation it may have at least 48 hours in advance of the proposed excavation.
- C. The Contractor will maintain any markings showing the presence of underground facilities. If the Contractor does not maintain such markings, and the Owner is required to reestablish them, the Contractor will pay the Owner any and all costs associated with that activity.

105.06 NOTIFICATION OF UTILITIES AND AGENCIES FOR STREET CLOSURE

- A. Before closing, or partially closing, any street, roadway, alley, or other pathway used by members of the public or by emergency services, the Contractor will take the following actions:
 - 1. Obtain and comply with the Permits, if any, that are needed to allow closure to occur;
 - 2. Obtain advance approval from the Owner's Representative; and
 - 3. Notify all public and private agencies responsible for emergency services of the impending closure at least two full business days in advance. The term "public and private agencies responsible for emergency services" includes, but is not limited to, police, fire, and ambulance services. The contents of the Notice must include the time of commencement and completion of Work, the named location where closure will occur, the Contractor's schedule of operations, the routes of any applicable detours, and any other information that emergency services providers would need to know in those particular circumstances in order to perform their services.
 - 4. Notify the Owner's Transportation Department.
- B. The Contractor will defend and indemnify the District and hold it harmless from any and all claims of damage, including attorney fees and costs, resulting from the Contractor's activities in regard to notification of utilities and emergency service providers, as more specifically provided in subsection 107.06.

105.07 ACTIONS REGARDING EXISTING IMPROVEMENTS AND UTILITIES

- A. The Contractor must protect the property of utilities, railways, and fire-control authorities that may be affected by the Contractor's work, as well as utility lines, pipelines, and underground tanks.
- B. The Owner will provide information it has to the Contractor regarding the location of existing watercourses, drains, sewer lines, and utility lines for purposes of preparing its Bid. The Owner does not always have or receive accurate information about the location of utilities. Therefore, such information will be considered to be approximate, and not guaranteed to be accurate. The Contractor is responsible for determining the exact location of utilities and existing improvements when performing its work.
- C. The Contractor will obtain written permission from the affected city agency before operating any water valve or hydrant. Unauthorized operation is prohibited. The Contractor will pay any fee associated with their operation.
- D. The Contractor will maintain the flow of sewers, drains, and water courses that might be interrupted by its work and restore that flow as directed by the Owner.
- E. The Parties agree that:
 - 1. A normal and usual occurrence in the construction of underground improvements is the discovery of utilities, service laterals, underground pipes, drains, and structures that interfere with the Contractor's work;

2. A reasonable number of such occurrences are usual and ordinary on projects that include underground work;
 3. Work will sometimes be done in close proximity to these conditions and such work may be made more difficult than originally thought;
 4. Such conditions may require a change in the Contractor's operations, such as changing the amount of traffic control, pavement, and backfill that is required; and
 5. The Contractor's Bid to the Owner reflected all costs in dealing with such conditions.
- F. The Contractor is responsible for any damage caused to any utility, whether known or unknown, and whether or not that was disclosed by the Contract Documents.
- G. The Contractor will maintain in place all utilities, whether or not shown on the Contract Documents. If any utility needs to be temporarily relocated for the Contractor's convenience or because of the method of construction or as a result of site conditions, the Contractor will bear all costs for that temporary relocation. The Contractor will maintain utilities that are relocated by others in their relocated positions in order to avoid interference with structures that cross the Project Work.
- H. The Contractor may not hinder the work of the Owner or the owner of a utility if any utility is relocated.
- I. The Owner will require a reasonable amount of time to perform design changes necessitated by conflicting utilities. In addition, utility owners will require a reasonable amount of time to make necessary utility relocations if such utilities are responsible for relocation.

105.08–105.09 RESERVED FOR EXPANSION

105.10 PROTECTION AND RESTORATION OF PROPERTY

- A. The Contractor will protect, and take every reasonable precaution to avoid damage to, all public and private property that might be damaged by its operations. See subsection 107.12 regarding Rights-of-Way, Easements, and construction limits.
- B. If public or private property, or both, is damaged by the Contractor's operations, the Contractor must either repair the damage or have the damage repaired by others at its own expense, without additional compensation from the Owner. The repair must bring the property damaged back to the same condition as it was in before the damage occurred. If repair and restoration is not feasible, the Contractor will pay the owner of the damaged property for the damage. If the damage has been caused to property of the Owner, the Owner has the right to determine whether the property will be repaired and restored by the Contractor or not. If the Owner elects to have the property repaired with its own forces or by another entity, the Contractor will pay the Owner all costs associated with that repair and restoration.
- C. The Contractor must give reasonable Notice to the owners and occupants of property adjacent to the Work to permit them to remove vehicles, trailers, and other possessions, as well as salvage or relocate plants, trees, fences, sprinkler systems, or other improvements in the Easement or Right-of-Way that are designated for removal or that might be destroyed or damaged by the Contractor's operations.

- D. The Contractor must protect all trees not designated for removal, lawns, and planted areas within the Right-of-Way or Easements, and restore all disturbed areas by seeding, mulching, and providing erosion control as set forth more specifically in Division 2, Section 207, *Erosion Control Seeding*. If conditions are such that seeding cannot be done, the Contractor must provide temporary erosion-control measures as set forth in Division 2, Section 209, *Erosion and Sediment Control*, or as directed by the Owner's Representative.
- E. The Contractor will review the location, limits, and methods to be used with the Owner's Representative prior to performing any clearing work.
- F. The Contractor must protect all signs, including business signs and tourist-oriented direction signs, from damage whether the signs are to remain in place or are placed on temporary supports until they are reinstalled on permanent supports in the same or similar location. Signs that are damaged are to be repaired at the Contractor's expense. The Contractor is responsible for any and all damages that result from the displacement of such signs.

105.11 USE OF WORK DURING CONSTRUCTION

- A. The Owner may decide to use part of the Work that has been completed before completion of all the Work required by the Contract. If that occurs, the Owner will notify the Contractor in writing of its intention.
- B. When use of part of the Work by the Owner begins, the Contractor is:
 - 1. Relieved of the duty of maintaining and protecting that portion of the Work, provided that it has been completed in accordance with the Contract.
 - 2. Relieved of responsibility for injury or damage to the portion of Work used by the Owner from use by public traffic or from the action of the elements of nature or from any other cause, except injury or damage resulting from the Contractor's own operations or from its negligence.
 - 3. Relieved of the responsibility of cleaning up that portion of the Work before final acceptance, unless the Contractor's own operations require such cleanup.
- C. Use by the Owner of a part of the Work as described in this subsection does not constitute final acceptance of the Work as a whole or any part thereof.

105.12 FURNISHING TEMPORARY SERVICES AND FACILITIES

The Contractor will provide temporary light, power, water, and other temporary services or facilities complete with connecting, piping, wiring, lamps, and similar equipment as required during construction of the Work, including testing and start-up, and remove temporary facilities on completion. Obtaining Permits and bearing the costs of temporary services and facilities is included within the Contract Amount.

105.13 WATER AND POLLUTION CONTROL

The Contractor must protect worksites and storage and disposal areas from washouts and erosion, and take all precaution to control or abate dust, nuisances, and air pollution arising from the performance of Work by taking necessary actions to prevent this. Such actions include, but are not limited to, cleaning

up, sweeping, sprinkling, covering, enclosing, or sheltering work areas and stockpiled materials, and removing promptly from paved areas earth or other materials that may become airborne or that may be washed into waterways or drainage systems. See also subsection 107.11(E).

105.14 NOISE

- A. The Contractor must comply with all federal, state, and local regulations regarding noise.
- B. The District cannot alter federal or state law. Variances from local regulations may be granted by the Noise Control Officer or by the Noise Review Board, depending on the nature, location, and period of time for which the variance is sought. If the Contractor seeks a variance of a local regulation, it must do so in the manner prescribed by the District Code.

105.15 ACCESS TO THE WORK

- A. The Contractor will provide access to the Work for representatives of the Owner, the affected city, the State of Oregon, the federal government, and other public entities having jurisdiction in the area.
- B. The Contractor will provide site access to the Owner's Representative or assigned personnel to all portions of the Work and to plants of manufacturers and suppliers at all times. The Contractor will provide them every opportunity to inspect the Work to ensure that it meets Contract requirements.

105.16 DEFECTIVE OR UNAUTHORIZED WORK

- A. Any portion of the Work that does not conform to the requirements of the Contract is unacceptable or defective and must be removed and corrected by the Contractor, even if it is contended that the Owner's Representative or other assigned personnel knew or should have known of the existence of the unacceptable work.
 - 1. All portions of the Work that do not conform to the requirements of the Contract Documents must be corrected within a reasonable time at the Contractor's sole expense and without an extension of Contract Time.
 - 2. The Owner may replace or correct Work within a reasonable time if the Contractor fails to do so and may charge the Contractor with all reasonable costs incurred while performing that Work, as well as with the costs of storing any salvageable materials or equipment. If that occurs, the Owner is also entitled to deduct such costs from any sums otherwise due the Contractor.
 - a. If salvageable materials, equipment, or both are stored, the Owner will notify the Contractor of the storage and give the Contractor ten days to remove the materials. If the Contractor fails to remove them by the end of that time, the Owner may sell them in any commercially reasonable manner, whether privately or publicly.
 - b. If sale is made, the Owner will keep all proceeds to the extent that the proceeds do not exceed the costs incurred in correcting and replacing the Work and in storing the materials and equipment. The Contractor will pay the Owner any difference in costs that may remain after the sale. If the proceeds exceed the Owner's cost, however, it will forward those sums to the Contractor.

- B. The Contract Documents or regulatory agencies may require that portions of the Work be observed, reviewed, or inspected before they are obscured or covered. Similarly, upon request, the Owner's Representative is entitled to observe portions of the Work before they are covered or obscured. If the Contractor covers or obscures a portion of the Work that is required or requested to be observed, it will uncover the Work for observation and bear any cost associated with that activity without a change in Contract Time.
- C. The Owner's Representative may request to see a portion of the Work that has been covered regardless of the requirements of the Contract Documents, regulatory agencies, or a prior request. Thereafter the Contractor must comply with the Owner's request. If, on inspection by the Owner's Representative, the portion of the Work that is uncovered is found to be in accordance with the Contract Documents, the Owner will bear all costs associated with that activity and provide additional Contract Time, if that activity would cause the Contractor to incur liquidated damages. But if, upon inspection by the Owner's Representative, the portion of the Work that is uncovered is found not to be in accordance with the Contract Documents, the Contractor will correct the Work and bear any cost associated with that activity without a change in Contract Time.
- D. Replacement and correction of Defective Work before the Work is completed and accepted is not limited by any warranty period otherwise established by the Contract.
- E. The Owner retains the right to accept portions of the Work that do not conform to the requirements of the Contract Documents. This acceptance must be in writing and given only by the Owner's Representative. Inspectors, employees, and other agents of the Owner have no authority to bind the Owner to accept nonconforming portions of the Work. If the Owner's Representative chooses to accept nonconforming portions of the Work, and those portions cost less than what the Contractor would have spent to comply with the Contract Documents, the Owner is entitled to a credit for the difference in price, which may be deducted from the Contract Amount.

105.17 HAZARDOUS SUBSTANCES ENCOUNTERED DURING CONSTRUCTION AND OTHER ENVIRONMENTAL LAWS

- A. With respect to Hazardous Materials to be used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project site, maintain available for inspection at the Project site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor will submit to the Owner a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors onto the Owner's property, including the purpose for their use on the Project.
- B. In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur because of any material or substance (including without limitation Hazardous Materials) encountered on the Project site, the Contractor must **immediately** (1) stop the Work or the portion of the Work affected, (2) notify the Owner and the Architect orally and in writing, and (3) protect against exposure of persons to the Hazardous Materials. The Contractor is to provide all written warnings, notices, reports, or postings required at law or by contract for the existence, use, release, or discovery of Hazardous Materials.

- C. With respect to any Hazardous Materials or other material or substance reported to the Owner under paragraph B above that were not introduced to the Project site by the Contractor or its Subcontractors of any tier, the Owner will obtain the services of a qualified environmental consultant to verify the presence or absence of the material or substance reported by the Contractor and, if the material or substance is found to be present, to verify that it is rendered harmless. Unless otherwise required by the Contract Documents, the Owner will furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing, stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner will propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area is to resume upon written agreement of the Owner and the Contractor. By Change Order, the Contract Time may, subject to agreement by the Owner and the Contractor, be extended appropriately and the Contract Amount will be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, which adjustments are to be accomplished as provided in section 109.17.
- D. With respect to any Hazardous Materials or other material or substance reported to the Owner under paragraph B above that was introduced to the Project site by the Contractor or its Subcontractors of any tier, the Contractor will be responsible to carry out the duties of (1) proposing to the Owner and the Architect a qualified environmental consultant, (2) obtaining and paying for the services of the environmental consultant, and (3) verifying that the material is rendered harmless, as otherwise set forth in paragraph C above. The Contractor will not be entitled to an increase in the Contract Amount as stated in the last sentence of paragraph C if the Contractor or its Subcontractors of any tier are responsible for the condition requiring the testing of the material and the stoppage of the Work. Remediation work must be conducted by properly qualified contractors approved in advance by the Owner. Generally, the Owner may at its option contract directly with environmental consultants and remediation contractors, regardless of whether the work will be performed at the Contractor's expense.
- E. To the fullest extent permitted by law, the Owner will indemnify the Contractor, Subcontractors, Architect, Architect's consultants and agents, and employees of any of them and hold them harmless from and against claims, damages, losses, and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was not introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the Owner under this section will be required to indemnify the Contractor, Subcontractors, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Contractor's own negligence, but will require indemnity to the extent of the fault of the Owner or its agents or representatives.
- F. To the fullest extent permitted by law, the Contractor will indemnify the Owner, the Owner's Representative and employees of any of them and hold them harmless from and against claims, damages, losses, and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided

by the Contractor under this section will be required to indemnify the Owner or its agents or representatives to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Owner's own negligence, but will require indemnity to the extent of the fault of the Contractor or its agents or representatives.

105.18 DOCUMENTS

The Contractor will maintain at the site for the Owner one record copy of the drawings, Plans, Specifications, Addenda, Change Orders, and other modifications, in good order and marked currently to record changes and selections made during construction, as well as Shop Drawings that have been reviewed and are being used. These are to be available to the Owner's Representative and be delivered to the Owner's Representative on request and on completion of the Work. The drawings will have recorded on them all changes and corrections and all actual dimensions, locations, and other details of the Work as actually built in progress.

106 CONTROL OF MATERIAL

106.01 CONTRACTOR-FURNISHED MATERIALS AND SOURCES

Unless otherwise specified in the Contract, the Contractor will:

- A. Acquire and furnish, at its own expense, all products and materials required for the Work from suppliers or sources of its own choosing.
- B. Acquire and furnish, at its own expense, access to and the use of all material sources.
- C. Acquire and furnish, at its own expense, on request, any and all Permits from federal, state, and local agencies necessary to use any source for materials.

106.02 QUALITY OF MATERIALS, PARTS, PRODUCTS, AND EQUIPMENT

- A. The Contractor will use or incorporate in the Work only materials, parts, products, and equipment that conform to the requirements of the Contract Documents.
- B. Manufactured products, equipment, materials, and parts incorporated into the Work must be new unless otherwise specified in the Contract Documents.
- C. Materials and products that do not meet the requirements of the Contract Documents at the time they are used are not acceptable and must be removed, regardless of whether they earlier appeared to have met the requirements of the Contract by testing, certification, or otherwise.
- D. Materials, parts, products, and equipment must meet the requirements of the latest printed edition of any applicable building codes, Reference Specifications, or industry standards stated in the Contract Documents for determining their acceptability in the Contract Documents.

- E. The Contractor must comply with codes, industry standards, and Reference Specifications that are made applicable by the Contract Documents. Such codes, standards, and Reference Specifications may include, but are not limited to, OSHA, UBC, UFC, UMC, NEC, AASHTO, NSF, and WEF. Without limiting the generality of other requirements of the Specifications, all Work specified herein must conform to or exceed the requirements of applicable codes and standards. In case of conflict between codes, standards, Reference Specifications, or other portions of the Contract Documents, the most stringent requirements govern. Any conflict between such standards and the Contract Documents must be brought to the attention of the Owner's Representative for clarification and direction prior to ordering or providing any materials or furnishing labor.

106.03 RELATIONSHIP TO SUBMITTALS

If the Contract requires that a product, material, part, or equipment must be submitted to the Owner for review before use in the Work, the Contractor will follow the requirements of subsection 104.03 regarding the Submittal process.

106.04 CERTIFICATIONS AND CONFORMANCE DOCUMENTS

- A. As used in this subsection, the following definitions apply:
1. "Products" refers to purchased items for incorporation into the Work, regardless of whether specifically purchased for the Project or taken from the Contractor's stock of previously purchased products.
 2. "Materials" refers to products that must be substantially cut, shaped, worked, mixed, finished, refined, or otherwise fabricated, processed, installed, or applied to form units of work.
 3. "Equipment" refers to products with operational parts, regardless of whether motorized or manually operated, including products with service connections such as wiring or piping.
 4. "Parts" refers to portions of products, materials, and equipment.
 5. "Certifications" refers to documents that show that materials, products, parts, and equipment required by the Contract meet the requirements of a Reference Specification. Certifications will require no interpretation of test results by the Owner's employees to determine whether the requirements of the Reference Specification have been met.
 6. "Conformance Documents" refers to documents that show that the material, part, product, or equipment meets the requirements of the Contract. Examples of Conformance Documents that may be acceptable are shop drawings, material lists, equipment lists, catalog description sheets, and manufacturer's brochures.
- B. The Contractor will establish that the materials, products, parts, and equipment that it proposes to use meet the requirements of the Contract Documents, including the requirements of any Reference Specifications or industry standards, by submitting the Certifications and Conformance Documents required by the Contract.
- C. The Contractor will bear the cost of providing Certifications and Conformance Documents, including the costs of any sampling and testing that will be performed in order to achieve

certification. Materials, products, parts, and pieces of equipment may not be incorporated into the Work without acceptable Certifications or Conformance Documents.

- D. Certification must be provided by the manufacturer or testing agency verifying that Contract requirements have been met. The certification must identify the testing agency and the representative responsible for the test results, and include a copy of the specified test results (ASTM, AASHTO, UL, etc.).
- E. Conformance Documents must be sufficient to permit the Owner to determine that the Contractor has provided what is required by the Contract Documents.
- F. Certifications and Conformance Documents must be clear and understandable to the person who will be reviewing them to determine whether the material, product, part, or equipment is the one specified by the Contract Documents. Certifications or Conformance Documents that are unclear or require analysis in order to determine whether the materials, parts, products, or equipment meet the requirements of the Contract are insufficient and will be rejected. The Contractor will bear all costs of and is responsible for any delay that occurs as a result of unclear certifications or Conformance Documents.
- G. Certifications and Conformance Documents are to be delivered to the Owner with the shipment of the corresponding material, part, product or material, unless other portions of the Contract Documents specify a different procedure.

106.05 SAMPLING AND TESTING OF PRODUCTS

- A. A "sample" is a physical example of workmanship, equipment, materials, or products that is proposed to be or has been incorporated into the Work by the Contractor.
- B. The Owner retains the right at any time during construction, or at any time during production, fabrication, or preparation of the Work, to test samples to determine whether they meet the requirements of the Contract Documents. The Owner may test any sample, regardless of prior certification, and regardless of whether any prior certification was required. The Owner may either conduct the test with its own forces or hire other persons to perform this work.
- C. The Contractor will cooperate with any sampling and testing that is required or requested. The Contractor will provide samples without charge, in time to permit testing before use.
- D. If a sample is to be tested prior to its incorporation into the Work, the Contractor may not incorporate the material, product, part, or equipment into the Work until testing is completed and the Owner gives permission for its use.
- E. The Owner will bear the costs of testing unless the tests show that the material, product, part, or equipment failed the test and did not conform to the requirements of the Contract, in which case the Contractor will bear the costs of testing.
- F. If the sample was previously incorporated into the Work and testing shows that the sample does not meet the requirements of the Contract Documents, the Contractor will pay for the test, and pay for replacing and repairing any equipment, materials, products, or portion of the Work in order to meet the requirements of the Contract Documents.

106.06 STORAGE AND PROTECTION OF ITEMS OF WORK

The Contractor will store items to be incorporated into the Work in a manner that maintains their quality and fitness for the Work. Stored items are subject to rejection prior to being incorporated into the Work if they do not meet the requirements of the Contract, regardless of prior review by the Owner. Stored items must be located to facilitate prompt inspection.

106.07 TRADE NAMES, EQUALS, AND SUBSTITUTIONS

- A. Whenever a process is designated, or a manufacturer's name, brand, or item designation is given, or whenever a process or material covered by patent is designated or described, it is understood that the words "or approved Equal" follow that name, designation, or description. The Owner does not know and cannot guarantee, however, that an "Equal" actually exists. If the Contractor submits a Bid assuming that the Owner will approve an Equal, it does so at its own risk, and remains responsible for providing the item specified in case the proposed substitution is rejected.
- B. The Contractor may offer to substitute materials, products, parts, or equipment of Equal or better quality and performance from those specified after execution of the Contract. To do so, the Contractor will submit any and all information to the Owner to show that the proposed substitution is Equal to or better than that specified by the Contract, including any and all information regarding changes to, or coordination with, any other portion of the Work that may be affected by the substitution.
- C. The Owner's Representative has the sole discretion to accept or reject an offer of substitution. If the Owner's Representative accepts the proposed substitution, the Contractor may proceed to use the substituted material, product, part, or equipment and incorporate it into the Work. Acceptance by the Owner's Representative, however, does not relieve the Contractor from full responsibility for the efficiency, sufficiency, quality, and performance of the substitution.
- D. No substitutions can be made without written approval of the Owner's Representative. Any cost differential between what was originally specified and what was substituted, and any change in Contract Time resulting from the substitution, must be reflected in a Change Order executed before the substitution is effective. If no Change Order is executed before the substitution occurs, the Parties agree that the substitution had no effect on either the Contract Amount or Contract Time.
- E. If the Owner's Representative rejects the proposed substitution, the Contractor will proceed to follow the Contract Documents as originally drafted, without a change in the Contract Amount or Contract Time. Therefore, the Contractor may not order materials, products, parts, or equipment in anticipation of the substitution before the offer of substitution is accepted.

107 LEGAL RELATIONS AND RESPONSIBILITIES

107.01 LAWS AND REGULATIONS

- A. The Contractor must comply with all federal, state, and municipal laws in regard to all matters concerning this Contract. This includes, but is not limited to, compliance with the ADA and City requirements regarding erosion control. The Contractor must also comply with the orders, rulings, decrees, and decisions of any administrative or judicial officials that in any manner whatsoever affect the Project, the Work, the safety of persons around the worksite, or the manner in which the Work is performed.

- B. If the Contractor observes that any portion of the Work is to be performed in a way that violates any law, code, or regulation, it must immediately notify the Owner in writing.

107.02 SUBCONTRACTORS

- A. Contractors are responsible for performing the Work required by the Contract Documents. Use of Subcontractors is permitted, but the use of Subcontractors, material suppliers, equipment suppliers, or others to perform portions of the Work does not release the Contractor from any contractual obligation. The Contract awarded to the Contractor cannot be assigned or transferred to another person without the Owner's written approval.
- B. The Contractor will provide in all its subcontracts that the Subcontractor, material supplier, and equipment supplier will be bound by the terms and conditions of this Contract.
- C. All agreements, subcontracts, and purchase orders executed between the Contractor and others for the Project will provide that they are assignable or otherwise transferable to the Owner at the Owner's option, if the Contract is terminated for any reason. If the agreements, subcontracts, and purchase orders are not assignable, the Contractor will be liable for any additional costs incurred by the Owner in procuring the same or substitute services, materials, equipment, supplies, or parts.
- D. The Contractor will provide the Owner with copies of all its subcontracts, purchase orders, and supply agreements relating to the Work on request of the Owner within three business days of the request.
- E. Substitution of Subcontractors must be in accordance with Oregon law. In addition, substitution of an M/W/ESB Subcontractor requires notification to the Owner's Representative, approval of the Purchasing Agent, and good-faith efforts to acquire a new Subcontractor, as more specifically provided in that portion of the Specifications.

107.03 NO WAIVER OF LEGAL RIGHTS

- A. The successful performance of the Contract will provide a benefit to the citizens of the District. Therefore, satisfactory completion of the Project by the Contractor is of paramount importance. The Contractor agrees that by accepting the Contract, it is required to perform the Contract in accordance with the Contract Documents and cannot contend that its performance was excused by any action of the Owner, except to the extent that the Contract terms have been modified by a written Change Order executed by both Parties.
- B. The Owner is entitled to insist on completion of the Contract in the manner and to the extent required by the Contract Documents. Therefore, any measurement, estimate, or certification made by the Owner that is incorrect may be corrected by the Owner at any time, regardless of whether that occurs before or after acceptance of the Project. Similarly, if work, equipment, parts, products, or materials do not conform to what is required by the Contract Documents, the Owner may require that the work be redone and that materials, parts, products, and equipment be replaced, regardless of prior approval by any agent or employee of the Owner.
- C. Acceptance of the Work by the Owner does not preclude the Owner from:
 - 1. Later insisting that the Work be performed in accordance with the Contract Documents.

2. Recovering damages for breach of contract or pursuing any other remedies that the law may provide.
 3. Any other remedy for breach of contract permitted by law.
- D. No action whatsoever, nor any oral or written statement whatsoever, made by any employee or agent of the Owner operates as a waiver or as an estoppel, or otherwise precludes the Owner from insisting on its rights to performance of the Contract in accordance with the Contract Documents.

107.04 NO THIRD-PARTY BENEFICIARY TO THE CONTRACT

The Parties agree that the execution of the Contract is not intended to, nor does it, create any third-party beneficiary rights in any person.

107.05 OTHER CONTRACTS

- A. The Owner reserves the right to award other Contracts, or issue Permits, for work that may require coordination with the Contractor's operations under the Contract.
- B. The Contractor will cooperate with the Owner and other Contractors and provide all reasonable opportunities to them to allow them to perform their separate work, including, but not limited to, the introduction and storage of materials and equipment.
- C. The Contractor will promptly notify the Owner's Representative if:
1. The performance of other Contractors hinders, delays, or prevents the Contractor from successfully completing its Work or makes its performance more costly;
 2. The Contractor's operations are interrelated or dependent on the work of other contractors and their work has defects that hinder, prevent, or otherwise make unsuitable the successful completion of the Contractor's Work.
- D. Failure to provide the Notice stated in paragraph C above constitutes the Contractor's acceptance of the other Contractor's work and constitutes conclusive waiver of any later Claim for additional compensation or Contract Time as a result of the other Contractor's work or activities.
- E. The Contractor will defend and indemnify the Owner and hold it harmless from all claims and all costs asserted by a separate contractor who asserts that the Contractor damaged its Work or property, as provided in subsection 107.06 below.
- F. The Contractor is responsible for any cutting, fitting, and patching that may be required to complete the Work, except as otherwise specifically provided in the Contract Documents. The Contractor may not endanger any work of any other Contractors by cutting, excavating, or otherwise altering any Work and may not cut or alter the Work of any other Contractor, except as directed by the Owner's Representative.
- G. The Contractor agrees that if a dispute arises regarding cleanup costs, the Owner's Representative may apportion such costs to the Contractor and other Contractors as the Owner's Representative determines is fair and equitable.
- H. The Contractor may not damage any Work that the Owner has performed, either with its own

forces or through the forces of another Contractor. If the Contractor desires or needs to alter, change, cut or otherwise modify the Work of the Owner or another contractor in any way, it will seek the written approval of the Owner's Representative. If the Owner seeks the Contractor's approval to alter, change, cut, or otherwise modify its work, the Owner will notify the Contractor of that fact.

107.06 LIABILITY AND INDEMNIFICATION

- A. The Contractor will indemnify and defend the Owner and its officers, employees, and agents and hold them harmless from any and all claims, losses, damages, attorney fees, costs, and liabilities arising out of accidents, unforeseen difficulties, or the intentional, reckless, or negligent acts or omissions of the Contractor or its Subcontractors, suppliers, employees, or agents in the performance of the Work. For purposes of this subsection, "claims" includes any assertion of a right to money damages or equitable relief or any combination thereof.
- B. The Owner will notify the Contractor of any claim of which it is aware that requires the Contractor to defend and indemnify the Owner and hold it harmless. Thereafter, the Contractor will notify the Owner in writing within 30 days that it will defend and indemnify the Owner and hold it harmless. The Contractor's failure to provide such notification is a breach of contract. If the Contractor fails to give Notice within 30 days, the Owner may defend the claim and charge the Contractor with any costs associated with that effort.
- C. The Owner reserves the right to participate in any claim irrespective of the Contractor's obligations to indemnify, hold harmless, defend, or notify. If the Owner elects to participate in any claim after receiving notification from the Contractor, however, the Contractor is not obligated to indemnify the Owner for the costs associated with that participation, although its other obligations to indemnify, hold harmless, and defend remain intact.
- D. Nothing in this subsection requires the Contractor or its insurer to indemnify the Owner for any claims or losses arising out of death of or bodily injury to persons or property damage caused, in whole or in part, by the negligence of the Owner.

107.07 ROYALTIES AND PATENTS

The Contractor will acquire and pay for all patents, royalties, and license fees required to perform the Work. The Contractor will defend and indemnify the Owner and hold it harmless from all claims brought against it regarding royalties, license fees, and patents as provided in subsection 107.06.

107.08 PERMITS

- A. The Contractor, without additional expense to the Owner, is responsible for obtaining and paying for any necessary fees, licenses, and Permits, and for complying with any federal, state, and municipal laws, codes, and regulations applicable to the performance of the Work, unless expressly provided otherwise in other portions of the Contract Documents. Notwithstanding the forgoing, Owner will obtain and pay for all required Clackamas County building permits.
- B. The Contractor understands that preliminary approval of the Owner's Plans and Specifications by regulatory agencies does not prohibit such agencies from requesting changes in order that the Work complies with the provisions of applicable codes, laws, and regulations. The Contractor agrees that a reasonable number of changes directed by Regulatory Inspectors is inherent in the nature of construction work and that its Bid includes the costs of making them. The Contractor

will bear the expense of complying with the requirements of Regulatory Inspectors for a reasonable number of changes even if such requirements require different or additional Work than that originally contemplated by the Contract Documents.

- C. The Contractor will defend and indemnify the Owner and hold it harmless from all claims brought against the Owner if such claims arose in whole or in part out of Permits and licenses that were the responsibility of the Contractor to obtain as provided in subsection 107.06.

107.09 LABOR

The Contractor will remove from the job any laborer, worker, mechanic, foreman, superintendent, or other person who is found to be incompetent or who fails or refuses to perform the work properly. In addition, the Contractor will remove any person who disrupts the Work by being intemperate, troublesome, or disorderly. If the Contractor refuses to take such actions, the Owner's Representative may order the person to be removed, and those instructions must be followed. Replacement of that person is at the Contractor's cost.

107.10 RESERVED FOR EXPANSION

107.11 PUBLIC SAFETY AND CONVENIENCE

- A. General Rule: The Contractor will ensure the safety of the public during its performance of the Work and will minimize any public inconvenience in addition to any other requirement imposed by law. These duties include, but are not limited to, the matters listed in paragraphs B–G below.
- B. Access: The Contractor will comply with the requirements of subsection 105.06 regarding closure of any street, roadway, alley, or other pathway used by members of the traveling public. The Contractor may also not unreasonably restrict access to public facilities, commercial property, fire hydrants, residential property, and other areas where the public can be expected to be present, such as sidewalks and streets, without first obtaining approval from the Owner's Representative. Driveways may be closed only with the approval of the Owner's Representative or after obtaining specific permission from the property owner or owners. In addition, the Contractor may not obstruct or interfere with travel over any public street or sidewalk without approval of the Owner's Representative.
- C. Worksite: The Contractor will keep the Project site safe in compliance with applicable law. Safety includes, but is not limited to: (1) providing approved types of secured and adequate barricades or fences that are easily visible from a reasonable distance around open excavations; (2) closing up or covering with steel plates all open excavations at the end of each Working Day in all street areas and in all other areas when it is reasonably required for public safety; (3) marking all open work and obstructions by lights at night; (4) installing and maintaining all necessary signs, lights, flares, barricades, railings, runways, stairs, bridges, and facilities; (5) observing any and all safety instructions received from the Owner's Representative; and (6) following all laws and regulations concerning worker and public safety. If the law requires greater safety obligations than those imposed by the Owner, the Contractor must comply with the law.
- D. Emergency: Emergency vehicles, including, but not limited to, police, fire, and disaster units must be provided access to the worksite at all times.
- E. Cleanliness: The Contractor will, on a continuing basis, keep the surfaces of all roadways,

sidewalks, and other pathways used by the public free of dirt, mud, cold plane grindings, and other matters that the Contractor may place on the road. The cost of performing such work is to be included in the Contractor's Bid, and no additional payment will be made for performing this task.

- F. Parking: The Contractor will make any necessary contacts with all applicable governmental bodies to arrange for the removal of parked automobiles, vehicles, and other obstructions if they would interfere with the performance of the Contractor's work.
- G. Accidents: The Contractor's Project Manager or superintendent is in charge of accident prevention. The Contractor must take all actions necessary to prevent damage, injury, and loss to persons and property as a result of accidents.

107.12 RIGHTS-OF-WAY, EASEMENTS, AND PREMISES

- A. The Contractor will confine its construction activities within property lines, rights-of-way, limits of Easements, and limits of construction Permits as shown or specified in the Contract Documents unless the Contractor has obtained permission in writing to use other land from the owner(s) of adjacent private property. The Contractor's Bid is to include all costs related to its needs for additional space and property if needed by the Contractor's method of operation to perform the Work. In order to protect the District from any claim by an owner of private property, the Contractor will provide the Owner's Representative with written permission from the property owner prior to the use of the property.
- B. The Contractor will obtain and bear the cost of Permits for special occupancy and use of specified work areas from all appropriate and necessary governmental agencies.

107.13 ONE-YEAR MAINTENANCE AND WARRANTY

- A. The Contractor will fully warrant all work for at least one full year from Substantial Completion of the Project, regardless of the length of manufacturers' or installers' warranties.
- B. In addition to any other warranties that are required, the Contractor will make all necessary repairs and replacements to remedy any and all defects, breaks, or failures of the Work occurring within two years following the date of Substantial Completion as a result of faulty or inadequate materials or workmanship. Such repairs and replacements must conform to the Contract Specifications under which the Contractor originally performed the work.
- C. In the event of a dispute regarding any portion of the Work, the Contractor will nonetheless provide any warranty service, repairs, or replacements as described in paragraphs A and B above, for that portion of the Work that is not in dispute. If a dispute delays Acceptance of the Work, the warranty for portions of the Work not in dispute will run from the date of Substantial Completion of the remaining portions of the Work.
- D. The Contractor must also repair any damage or remedy any disturbance to other publicly or privately owned property or improvements thereon if caused by the Contractor's work and if the damage or remedy occurs during the warranty period.
- E. If the Contractor performs warranty work, the warranty work must also have a one-year warranty period from the date of its completion and acceptance by the Owner.
- F. The Contractor will obtain a warranty/maintenance bond for the benefit of the owner to guarantee that any work defects found in the original construction will be repaired during the warranty period under Section 107.13(A) and any extension of the warranty period under Section 107.13(E).
- G. The Owner will provide the Contractor with written Notice of the need to perform warranty work unless it is determined that an emergency exists, that delay would cause serious additional loss or damage, or that any delay in performing the work might cause injury to any member of the public. If the Contractor, after written Notice, fails within ten days to comply with the Owner's request, the Owner has the right to perform the warranty work either by hiring another Contractor or by using its own forces. In that event, the Contractor and its Surety will be liable to the Owner for the cost of the work performed and any additional damage suffered by the Owner.

107.14 HAZARDOUS COMMUNICATIONS PROGRAM COMPLIANCE

- A. The Contractor must comply with OR-OSHA requirements regarding "hazardous communication."
- B. The Contractor will have available at the worksite and make available to the Owner's Representative on request copies of Material Safety Data Sheets ("MSDS") for all hazardous chemicals to be used or stored by the Contractor at or around the worksite. The Owner will submit to the Contractor MSDSs for all hazardous chemicals being used or stored at or around the worksite by the District. This exchange of information will be made at the preconstruction conference for all hazardous chemicals known at that time and will be continued for any additional hazardous chemicals to be delivered to the worksite prior to their delivery.
- C. The Contractor may not deliver, store, use, or destroy any hazardous chemical at or around the

worksite without prior submittal of the MSDS for that chemical.

- D. The Contractor will clearly identify the contents of all containers used for the Work at the worksite. Each container must clearly list appropriate hazard warnings, names and addresses of the manufacturers, and first-aid treatments for the chemical or substance involved. No storage of any hazardous chemical will be allowed if it is not in compliance with this subsection.
- E. If hazardous chemicals run through unlabeled pipes, the Contractor will notify the Owner's Representative of all appropriate information about it, including, but not limited to, potential hazards and safety precautions, prior to starting work.

107.15 PROTECTION OF CULTURAL RESOURCES

- A. The Contractor must comply with all applicable laws governing protection of cultural resources. "Cultural resources" includes "archeological objects" and "archeological sites" as defined in ORS 358.905.
- B. If cultural resources are encountered by the Contractor while performing work and their disposition is not provided for in the Special Provisions, the Contractor must do the following unless otherwise directed by the Owner's Representative:
 - 1. Immediately cease all work activities in and around any area of the Project where cultural resources are suspected or have been discovered (the "affected area"). The Contractor may not remove or disturb any cultural resources. Cultural resources are not property of the Contractor.
 - 2. Secure access to the affected area.
 - 3. Immediately contact the Owner's Representative and deliver an oral assessment of the affected area. Within 48 hours of the discovery, the Contractor must deliver a written statement to the Owner's Representative briefly describing the cultural resources encountered, the current condition of the affected area, and all actions taken.
 - 4. Immediately place appropriate measures on and adjacent to the affected area to protect it from damage and to prevent rain and stormwater from contacting the cultural resources.
- C. On receipt of notification from the Contractor that cultural resources are suspected to exist or have been discovered, the Owner's Representative will do the following according to applicable law:
 - 1. Arrange for investigation of the cultural resources or the affected area, including notification of Indian tribes and regulatory agencies.
 - 2. Arrange for disposition of the cultural resources based on the results of the investigation.
 - 3. Notify the Contractor when to begin or resume construction operations in the affected area.

107.16 INDEPENDENT CONTRACTOR STATUS

The service or services to be rendered under the Contract are those of an independent contractor. The Contractor is not an officer, employee, or agent of the District, as those terms are used in ORS 30.265.

107.17 TRESPASS

The Contractor is responsible for trespass or encroachment on or damage to adjacent property and from claims resulting from the Contractor's operations.

108 PROSECUTION AND PROGRESS OF WORK

108.01 CONTRACTOR'S CONSTRUCTION SCHEDULE

- A. An accurate and regularly updated schedule is essential for the Owner to monitor progress of the Work. The Contractor will provide an updated schedule as described in this subsection.
- B. A preliminary Construction Schedule will be submitted by the Contractor at the preconstruction conference, unless requested at a different time by the Owner's Representative. The preconstruction conference is a meeting scheduled by the Owner between the Owner and the Contractor to discuss the Project before work begins.
- C. Within three weeks of receipt of the Notice to Proceed or prior to starting work, whichever is earlier, the Contractor will submit for the Owner's written review a comprehensive Construction Schedule in the form required by the Contract Documents. If during the course of that review the Owner's Representative notices that the Construction Schedule conflicts in some way with the Contract Documents, that fact will be brought to the Contractor's attention. Failure to catch errors or inconsistencies in the Construction Schedule by the Owner's Representative, however, does not relieve the Contractor from having to comply with the Contract Documents, or from finishing the Work within the Contract Time.
- D. If it is desirable to carry on portions of the Work in more than one location simultaneously, the Contractor will submit a Construction Schedule for each location at least two weeks in advance of that activity, or at such other time as requested by the Owner's Representative.
- E. If the Contractor's proposed Construction Schedule does not meet the requirements of the Contract, the Contractor will immediately resubmit a Construction Schedule that conforms to the Contract.
- F. Construction Schedules will show the proposed sequence of work, include the procurement schedule, state the time required for completion of major tasks, take into account the passage and handling of traffic with the least practicable interference, and the orderly, timely, and efficient prosecution of work. The Owner will use the Construction Schedule to check on the progress of work, to coordinate related activities such as utility relocation, to ensure adequate inspection resources, and to plan and coordinate surveying and testing.
- G. The Contractor will prepare and submit a revised Construction Schedule whenever requested by the Owner's Representative or when substantial changes in the sequence, timing, or progress of work require it. The Owner's Representative may request a revised Construction Schedule at any time and, if so, the Contractor will provide one within seven Calendar Days of the request.
- H. If a Construction Schedule or revised Construction Schedule does not accurately reflect Work on the Project or conflicts with requirements of the Contract, the Owner's Representative may direct that the Contractor's work be suspended until satisfactory Construction Schedules are provided. The suspension does not entitle the Contractor to additional Contract Time or additional compensation. In addition, the Owner's Representative may withhold part or all of a progress payment until proper Construction Schedules and revised Construction Schedules are submitted.

108.02 MEETINGS

- A. Project meetings include a pre-Contract meeting, a preconstruction meeting, progress meetings, and specially called meetings as may be required during the progress of the Work.
- B. The Architect is responsible for recording the significant issues and resolutions for distribution to the Contractor and the Owner's representative.
- C. Pre-Contract Meeting.
 - 1. Prior to the execution of the Contract, a meeting is to be held at a time and place convenient for the Owner and successful Bidder.
 - 2. The meeting is to be attended by the Owner's Representative, successful Bidder, the Bidder's superintendent, and major Subcontractors.
 - 3. The purpose of the meeting is to go over the Project with the successful Bidder to make a final determination as to whether the Bidder has the capability of proceeding to construct the Project in accordance with the Contract Documents. The successful Bidder will bring such information to the meeting as is requested by the Owner.
- D. Preconstruction Meeting.
 - 1. The meeting is to be held on site or at a time and place convenient for the Owner and the Contractor. The meeting will occur in advance of the issuance of the Notice to Proceed.
 - 2. The meeting will be attended by the Owner's Representative, the Contractor, the Contractor's superintendent, major Subcontractors, affected utility providers, and major suppliers.
 - 3. The agenda is to consist of the following items, and may be supplemented at the suggestion of the Contractor or the Owner:
 - a. Introduction of principals and representatives.
 - b. Review of requirements for the use of the site, utilities, and safety.
 - c. Review of requirements for documentation on site.
 - d. Discussion of the Project schedule and sequencing of work.
 - e. Resolution of perceived discrepancies in the Plans and Specifications, if any.
 - f. Technical questions from the Contractor, Subcontractors, and suppliers.
 - g. Procedural review of the Submittal process, field decisions, Change Order procedure, payment, and wage certification requirements.
 - h. Establishment of a time for on-site meetings.
 - i. Distribution of Contract Documents.
 - 4. The Contractor will provide the following information at the preconstruction meeting: the Project schedule, the Schedule of Values, a list of all Subcontractors to be used on the Project, and emergency telephone numbers.

E. Progress Meetings.

1. Progress meetings are those meetings held during the progress of the Project. They are to be held at a time and location that is agreed on during the preconstruction meeting.
2. Progress meetings are to be held weekly during construction, or more frequently as required.
3. The Contractor's superintendent and the Owner's Representative will attend the meetings.
4. The agenda at the meeting is to include a review of construction directives, field reports and meeting records, Submittals, the Project schedule combined with a report on progress by the Contractor, Change Order status, submittals of Applications for Payment, requests for additional work or time, and site tours and problem resolution.

F. Pre-installation Meetings.

1. If another portion of the Specifications requires a pre-installation meeting, the Owner's Representative will convene one at which the Contractor and any other necessary person will attend. The meeting will occur before the installation of products specified.
2. The Owner's Representative will provide written Notice in advance of the meeting date, make arrangements for the meeting, and distribute copies of any decisions made within three days after the meeting.
3. The meeting is to be attended by the Owner's Representative, any design consultants on behalf of the Owner or the Contractor, the Contractor, and any Subcontractors whose work is affected by the agenda.
4. The agenda will include a review of substrates, submittals affecting the portion of the Work to be installed, site conditions, site samples, mock-ups, and procedures for installing, finishing, testing, and inspecting that portion of the Work.

108.03 NOTICE TO PROCEED

A. The Notice to Proceed is a written document that authorizes the Contractor to begin the Work described in the Contract Documents and sets forth when the Contract Time will begin.

1. Work may not begin until the Notice has been given.
2. Before starting Work, the Contractor will file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.830(3), unless otherwise exempt under these provisions. The Contractor will also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt.

B. The Notice will not be given until the Contractor provides the Owner with all documentation necessary for Contract performance, including, but not limited to, all documents required by the Invitation to Bid.

- C. The Owner may delay the issuance of the Notice to Proceed beyond 30 Calendar Days if all required Easements or Permits have not been obtained, if necessary utility relocation, construction, or reconstruction has not been completed by the Owner or the Contractor, or for the Owner's convenience. If issuance of the Notice to Proceed is delayed for these reasons, the Owner will notify the Contractor of the delay.

108.04 CONTRACT TIME

- A. Time is of the essence of this Contract. The time allowed to complete the Work will be stated in the Proposal and/or Special Provisions and will be known as the "Contract Time." The Contractor agrees to complete the Work within the Contract Time.
- B. Contract Time will be expressed in one or more of the following ways:
 - 1. By a calendar date on which the Work will be completed; or
 - 2. By a given number of Calendar Days.
- C. When Contract Time is expressed as a given number of Calendar Days, the date on which it will begin is the first Calendar Day following the date of the Notice to Proceed, unless the Notice establishes a different date.
- D. The Contractor will provide the necessary labor, equipment, and materials to ensure that Work is completed within the Contract Time. If the Contractor does not complete the Work within the Contract Time, the Owner is entitled to impose liquidated damages in addition to any other remedies the Owner may have under the Contract Documents.

108.05 ADJUSTMENTS TO CONTRACT TIME

The amount of Contract Time that a Contractor has to complete a Project may be adjusted, but only as specified in this subsection.

- A. The Owner has discretion to decrease the amount of Contract Time if a portion of the Work is eliminated and the amount of remaining Work to complete the Project will take less time. The Owner and the Contractor will try to reach an agreement regarding any reduction in Contract Time before the Owner's exercise of discretion.
- B. Contract Time will be increased only if three events all occur: (1) the Contractor encounters one or more excusable delays, (2) the excusable delay is shown to have actually affected the overall completion date of the Project, and (3) the Contractor gives the Owner a request for an increase in Contract Time in the manner specified by subsection 109.17.
- C. An excusable delay is one that arises from unforeseeable causes that are beyond the control and without the fault or negligence of the Contractor, its Subcontractors, and suppliers. Excusable delays alone do not justify an extension of Contract Time unless the two other factors noted in paragraph B above have occurred.
 - 1. Excusable delays include without limitation:
 - a. Act of God.
 - b. Act of public enemy.

- c. Act of vandalism.
- d. Strikes, labor disputes, or freight embargoes that, despite the Contractor's reasonable efforts to avoid, cause a shutdown of the entire Project or one or more controlling operations. A strike or labor dispute may involve a union bargaining with the Contractor, a Subcontractor, a supplier, or the Owner.
- e. Suspension of the Work if by written order of the Owner's Representative and the suspension is not because of the Contractor's failure or neglect.
- f. Unusually severe weather, which is weather that is abnormal compared to past weather at the same location for the same time of year, which actually has an adverse impact on critical work and which could not reasonably have been anticipated by the Contractor. Rain, windstorms, and other natural phenomena for the specific locality of the Work, which might reasonably have been anticipated from the previous ten years of historical records of the general locality of the Work, may not be construed as abnormal or unanticipated. It is agreed, however, that rainfall greater than the following cannot be reasonably anticipated:
 - (1) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by 25 percent; or
 - (2) Daily rainfall equal to, or greater than, 0.75 inch at any time.

The office of the Environmental Data Service of the National Oceanic and Atmospheric Administration (NOAA) is to be considered the official agency of record for weather information, and the closest reporting station nearest the locality of the Work will be used to measure rainfall and other typical weather conditions.
- g. Unreasonable delays caused by actions of the Owner that delay an item of work on the Project. Such delays might stem from errors, changes, or omissions in the Plans, quantities, or Specifications, Extra Work, and Right-of-Way and access delays if they meet the conditions stated in paragraph D below.
- h. The Owner's direction to perform additional Work.

2. Delays that are not excusable include without limitation:

- a. Delays by Subcontractors or suppliers at any tier unless it can be shown that the delays were unforeseeable and not caused by any failure or neglect on the part of the Subcontractor or supplier.
- b. Delays that affect the Contractor's planned early completion, but do not affect the specified or adjusted Contract Time.
- c. Shortages of materials or equipment if the supplies, services, or equipment were obtainable from other sources in sufficient time to permit the Contractor to meet the required schedule.
- d. Inadequacy or late delivery of materials and equipment.
- e. Financial difficulties.
- f. Lack of know-how or other inability to perform.

- g. Labor problems other than the examples specified in 1(d) above.
 - h. Any requirement that the Contractor use equipment designated by the Owner for the Project ("sole source" equipment).
 - i. Time used by the Owner when such is permitted by the Contract. Examples are delays in reviewing Contractor requests for substitutions, Contractor requests for Proposals, and Contractor Submittals.
- D. As noted in paragraph C(1)(g) above, Right-of-Way and access delays may be considered to be excusable delays. Such delays are excusable delays only if the Contractor's work is actually delayed because of the Owner's failure to make available to the Contractor necessary Right-of-Way for performance of the Work, or the Owner-controlled access to or rights of occupancy of buildings and other properties that the Contractor is required to enter or to disturb under Contract requirements.

108.06 REMEDIES FOR DELAY

- A. The Parties agree that the occurrence of an excusable delay that delays overall Project completion may not result in additional compensation paid to the Contractor. No additional compensation will be paid to the Contractor for excusable delays that are not the fault of either the Contractor or the Owner, such as those listed in paragraphs 108.05C(a)-(f). In that situation, the Contractor is entitled only to an adjustment of the Contract Time.
- B. No additional compensation will be paid to the Contractor for any time period when the overall Project completion date is delayed as a result of concurrent delay. Delays are considered to be concurrent when the Contractor encounters an excusable delay as defined in paragraphs 108.05C(1)(g) or (h) above, but also has caused its own delay to the Project for the same period of time. In that situation, the Contractor is entitled to an adjustment of Contract Time only for the length of the concurrent delay.
- C. Additional compensation will be paid to the Contractor if unreasonable delays caused by the Owner as described in paragraphs 108.05C(1)(g) and (h) above are the sole reason that the overall Project completion date is delayed. No additional compensation is warranted for delay if that delay does not affect the overall Project completion date.
- D. When the Contractor is entitled to additional compensation as stated above, the Contractor is entitled to reimbursement during the period of time when overall Project completion was actually delayed. Such reimbursement will include direct costs, if any, incurred as a result of the delay and a total of 10 percent added to these amounts for both overhead and profit. Work performed by a first-tier Subcontractor may include no more than a 10 percent markup for both overhead and profit, with an additional 5 percent markup for the Contractor for both overhead and profit. If the work is performed by a Subcontractor at the second tier or lower, that Subcontractor is entitled to a total of 10 percent for both overhead and profit and the Contractor and any Subcontractors above that tier are entitled to a total of 3 percent each for overhead and profit. Any other cost or consequential damage, including, but not limited to, costs incurred on other construction projects, is not compensable.
- E. All adjustments of Contract Time are to be solely for the period of time during which the overall Project completion date was actually delayed.

108.07 SUSPENSION OF WORK

The Owner has the authority to suspend all or part of the Work of the Contractor as provided below.

- A. The Owner may suspend all or part of the Contractor's work for its convenience for a period of time that the Owner's Representative determines necessary.
- B. If suspension occurs for the Owner's convenience or at the direction of the federal government, as a result of the operation of law, such as an injunction issued by the court or a directive from the federal or state government, the Contractor will be provided with an adjustment of Contract Time corresponding to the period of the suspension and be reimbursed for it as provided in subsection 108.06D. But if performance of work would have stopped as a practical matter for other reasons irrespective of the Owner convenience, such as unusually adverse weather conditions or other excusable delays noted in subsection 108.05C, then no additional compensation will be provided.
- C. The Contractor is responsible for protecting the Work already performed during the period of suspension. It will also provide temporary protection devices to warn, safeguard, protect, and inform traffic and the public during this same time. Costs are recoverable for such measures only if provided in B above.
- D. The Owner is also entitled, but not required, to suspend work on the Project if the Contractor has failed or neglected to perform work in the manner required by the Contract or if the Contractor has created any unreasonable risk to safety. The Contractor is not entitled to any additional compensation or Contract Time if suspension occurs because the Contractor has failed or neglected to carry out any provision of the Contract.
- E. Work must resume as soon as possible after the Contractor receives written Notice that the Owner has canceled the suspension of work. The Contractor is deemed to have received the Notice if it is mailed or sent by facsimile transmission to it.

108.08 SUPERVISION

- A. The Contractor or a representative authorized to act on the Contractor's behalf will supervise the progress and coordination of the Work and be continually available in case the Owner needs to communicate with the Contractor about the Work. The Contractor may have only one authorized representative and will inform the Owner if that representative changes.
- B. If, for some reason, neither the Contractor nor a fully authorized representative is available and communication is necessary, the Owner may communicate with, or give directions to, any person working for the Contractor. The Contractor will follow any direction given by the Owner. Such directions will be confirmed in writing at the Contractor's request.

108.09 USE OF PLANS AND SPECIFICATIONS

- A. The Owner intends the Plans and Specifications to coordinate with each other to provide for a complete Project. The Contractor will check and compare all Plans and Specifications prior to construction and notify the Owner if conflicts, discrepancies, errors, or omissions are apparent in order to permit correction at the lowest possible cost to all concerned. A current copy of the Plans and Specifications reflecting all changes that have been made during the Work must be kept on or near the site of the Work at all times.

- B. The Contractor will provide all work and materials reasonably required or intended to complete the Work, regardless of whether they are expressly mentioned in the Plans and Specifications.
- C. The Contractor will verify measurements provided by the Plans and Specifications at the Project site to determine whether they are still correct, since changes to the Plans, Specifications, and Project site are common and the inherent changing nature of construction work may require adjustments to such measurements. Similarly, the Contractor is not entitled to rely on measurements deduced or scaled from, but not explicitly provided by, the Plans.
- D. The Owner reserves the right to issue additional drawings or written instructions if that appears helpful or necessary to complete the Work. If so, the Contractor will perform the Work in accordance with the additional details or instructions.
- E. At the completion of all the Work, the Contractor will submit a complete set of Plans showing all "As-Built" conditions on the Project.

108.10 OWNER'S RIGHT TO PERFORM OR DELETE WORK

- A. If the Contractor refuses or fails to comply with the Contract, the Owner may correct any deficiency or defect or perform work that the Contractor has failed to perform, or take other appropriate action, without prejudice to any other remedy the Owner may have under the Contract. Before taking that action, the Owner will provide the Contractor and its Sureties with seven days' Notice of its intentions, unless an emergency or dangerous condition exists, in which case the action may be taken without Notice. If the Owner performs part of the Contractor's work, corrects deficiencies, or is required to take action as a result of an emergency or dangerous condition, the Owner will deduct the cost of that action from any payment then or thereafter due the Contractor. If the cost of the Owner's action exceeds any sums held by the Owner and otherwise payable to the Contractor, the Contractor agrees to reimburse the Owner for any excess costs.
- B. The Owner has the right to delete Work from this Contract, and the Parties agree that such action does not constitute a breach of contract. Therefore, the Owner may delete Work from the Contract and perform it with its own forces or have such Work performed by another Contractor. If Work is deleted from the Contract, the cost of performing such Work will be deducted from the Contract Amount to be paid to the Contractor. Any objection to the change in Contract Amount must be processed as a Claim as required by subsection 109.17.

108.11 TERMINATION FOR DEFAULT

- A. The Owner has the right to terminate the Contractor's right to proceed with all or any portion of the Work if the Contractor is found to be in default of its obligations under this Contract. Default will occur if:
 - 1. The Contractor refuses or fails to prosecute the Work, or any separate part of the Work, with the diligence that will ensure its completion within the time specified in this Contract, including any extension of Contract Time that has been granted;
 - 2. The Contractor fails to construct the Project in accordance with the Plans and Specifications or fails to follow the directions of the Owner's Representative;

3. The Contractor is adjudged bankrupt or has made a general assignment for the benefit of creditors; or
 4. The Contractor fails to comply with other provisions of the Contract Documents or disregards laws and ordinances applicable thereto.
- B. If the Contractor is in default, the Owner will notify the Contractor and all of its Sureties in writing of its intention to terminate the Contractor's right to proceed with the Work no less than seven days in advance of the date of the actual termination. The Contractor and the Sureties are notified if the Notice is sent to the last known address provided to the Owner by the Contractor and its Sureties. For purposes of computing time in this subsection, the first day counted is the day that the Notice is mailed by the Owner.
- C. When termination occurs, the Owner may take over the Work and complete it, and may take possession of any materials, tools, plants, and appliances thereon, as well as all other materials whether on the premises or not, for which the Contractor has received whole or partial payment, that are necessary to complete the Work. The Contractor and its Sureties are liable for any damage to the Owner resulting from the Contractor's default, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any costs incurred by the Owner in completing the Work that exceeds any remaining Contract balance.
- D. When termination occurs, the Owner may elect to have the Contractor assign any and all subcontracts and material contracts to the Owner or to the Owner's designee, which may be another Contractor. The Contractor will execute such assignments within four Calendar Days of their receipt.
- E. Upon termination, the Owner will make no further payments to the Contractor. The Contractor will receive additional payment for Work performed prior to termination only if the cost of completion of the Work is less than the Contract balance held by the Owner.
- F. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the Parties, including the right to any damages, will be the same as if the termination had been issued for the convenience of the Owner as provided in subsection 108.13 below.
- G. The rights and remedies of the Owner in this subsection of the Contract are in addition to any other rights and remedies provided by law or under this Contract.

108.12 TERMINATION FOR CONVENIENCE

- A. The Owner may terminate performance of Work under the Contract in whole, or in part, if the Owner determines that a termination is in the Owner's interest.
- B. When the Owner decides to terminate a Contract for convenience, the Owner will notify the Contractor and its Sureties in writing of its intention to terminate the Contractor's right to proceed with the Work no less than seven days in advance of the date of the actual termination. The date of termination, which is the date after which no Work is to be performed, must be stated in the Notice. Notice will be deemed to have been given if sent to the Contractor's or any Surety's last known address provided to the Owner by the Contractor and its Sureties. For purposes of computing time in this subsection, the first day counted is the day that the Notice is mailed by the Owner.

C. After receipt of a Notice of Termination, and except as directed by the Owner, the Contractor will immediately proceed with the following obligations:

1. Stop work by the date as specified in the Notice;
2. Award no further subcontracts and place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the Contract, if any;
3. Terminate all Subcontractors and orders to the extent that they relate to the Work terminated;
4. Assign to the Owner, if directed by the Owner's Representative, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Owner will have the right to settle or to pay any termination settlement proposals arising out of those terminations;
5. With approval or ratification to the extent required by the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;
6. As directed by the Owner, transfer title and deliver to the Owner (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the Work terminated and (b) the completed or partially completed Plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Owner;
7. Take any actions that may be necessary, or that the Owner's Representative may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Owner has or may acquire an interest; and
8. Use its best efforts to sell, as directed or authorized by the Owner's Representative, any property of the type referred to in (6) above, except that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the Owner's Representative. The process of any transfer or disposition will be applied to reduce any payments to be made by the Owner under this Contract, credited to the price or cost of the work, or paid in any other manner directed by the Owner's Representative.

D. Upon termination, the Owner will pay the Contractor the following costs as a result of the termination and no other:

1. In regard to the Contract Work performed before the effective date of termination, the total (without duplication of any items) of the following costs:
 - a. The cost of this Work, as determined by the method of payment established by the Contract Documents;
 - b. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if such costs are not included in subparagraph D(1)(a) above and if the Owner does not have the contracts assigned for the purpose of settlement; and

- c. A sum as profit on subdivision (a) above, not to exceed 10 percent of that amount, unless it appears that the Contractor would have sustained a loss on the entire Contract had it been completed. No profit, however, is permitted on costs compensated under subparagraph D(1)(b).
- 2. The reasonable costs of settlement of the Work terminated, including:
 - a. Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, except that no Allowance will be made for costs incurred as attorney fees;
 - b. The termination and settlement of Subcontractors (excluding the amounts of such settlements); and
 - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- E. No costs other than those allowed in paragraph D are to be paid. By way of example only, and not by way of limitation, costs that would not be allowed include anticipated profits on unperformed Work, consequential damages, post-termination overhead, Bid or Proposal preparation costs, costs for retraining employees, depreciation on idle equipment, cost of common items reasonably usable on the Contractor's other work, and costs unrelated to the Work performed prior to the date of termination.
- F. The Owner may deduct from any sums otherwise due the Contractor under paragraph D above the cost of advance payments made to the Contractor under the terminated portion of this Contract, any claim that the Owner has against the Contractor whether or not arising from this Contract, and the agreed price of, or proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provision of subparagraph C(8) and not recovered by or credited to the Owner.
- G. Payment from the Owner is not due until the Contractor has submitted an itemization of its recoverable costs to the Owner in writing, together with supporting documentation. The Contractor will supply additional supporting documentation on request by the Owner in order to recover its costs.
- H. The Contractor will maintain all records and documents relating to the termination until the Owner and the Contractor resolve the amount of costs to be paid by the Owner to the Contractor as a result of this termination. Such records must be made available to the Owner within 30 days of the request.

108.13 SUBCONTRACTOR TERMINATION CLAIMS

- A. This subsection establishes the procedure and provides additional details regarding costs allowed by subsection 108.12 when a Contractor must terminate subcontracts when its own Contract has been terminated for convenience. It is not applicable if the Contractor assigns its subcontracts to the Owner for the purpose of settling or paying termination settlements to those Subcontractors as provided in subsection 108.12C.
- B. The Contractor will reach a binding agreement with the Subcontractor before the Contractor can recover the amount of the Subcontractor's Claim from the Owner. That agreement must be reached before the Contractor presents its Claim to the Owner. Contingent agreements with Subcontractors are prohibited.

- C. The Owner is liable only for reasonable settlement costs between the Contractor and its Subcontractors. Therefore, if the Contractor has agreed to pay an unreasonable amount to a Subcontractor by way of settlement, the Owner is liable only for reasonable costs incurred in that settlement. Reasonable settlement costs do not include the Subcontractor's anticipated profits on unperformed work or consequential damages, or costs similar to those excluded by subsection 108.12E.

109 PAYMENT

109.01 RESERVED FOR EXPANSION

109.02 COMPENSATION

- A. The Contractor is to be paid the Contract Amount for performing the Work.
- B. The Contract Amount for Lump Sum Contracts is the amount Bid by the Contractor for performing the Work, as changed by any authorized Change Orders.
- C. The Contract Amount for Unit Price Contracts is determined by multiplying the final Bid item quantities by the Unit Prices Bid by the Contractor, as changed by any authorized Change Orders.
- D. The Contract Amount for Contracts using a combination of Unit Prices and Lump Sum prices is determined by adding together the amount bid by the Contractor for the Lump Sum items with the amount determined for the Unit Price items, as noted in paragraph C above, as changed by any authorized Change Orders.
- E. The Contract Amount is full compensation for furnishing all materials, Incidental Work, equipment, tools, labor, and incidentals necessary to perform the Work in a complete manner in compliance with the Contract Documents, and for risk, loss, damage, or expense arising from the nature or prosecution of the Work or from the action of the elements. In addition, the cost of Bonds, insurance, and compliance with all legal requirements for the Project is included within the Contract Amount.

109.03 OTHER CHANGES TO COMPENSATION

- A. Compensation and/or time of Substantial Completion may be adjusted if the Contractor performs Extra or changed Work. Extra Work or changed Work is ordered pursuant to a Construction Change Directive, as described in subsection 109.05 below, or through the acceptance of a Change Order Request (COR), as described in subsection 109.08 below.
 - 1. The amount of compensation for Extra or changed Work will be determined by the mutual agreement of the Contractor and the Owner through the COR process. Thereafter, the Owner and the Contractor will execute a Change Order adjusting the compensation to be paid to the Contractor, the Contract Time, or both.
 - 2. If no agreement is reached and the Owner believes that the work should be performed, the Owner will direct that the Work be performed pursuant to a Construction Change Directive, as provided in subsection 109.05. After the Work is complete, a Change Order will be executed. If disagreement between the Owner and the Contractor remains, the Contractor will file a Claim pursuant to subsection 109.17 if it believes it is entitled to more compensation than the Owner believes is due.

3. Change Orders are described in subsection 109.16 below.
- B. Compensation is not adjusted if the Contractor receives a Field Order or Architect's Supplemental Instruction, because neither of those is intended to affect the Contract Amount. _

109.04 LETTERS OF AUTHORIZATION (LOA)

- A. Prior to incurring any third-party expense for the Work, including purchase of materials or approval of a subcontract, the Contractor shall obtain an LOA from the Owner. The Contractor shall submit the proposed LOA in a form required by the Owner. At a minimum the LOA will include:
1. The specification section or portion of the Work for which the expense is incurred;
 2. The name of the vendor or subcontractor supplying the product or doing the work;
 3. Alternates, if any;
 4. The price or bid amount;
 5. A summary of all bids received;
 6. The relationship of the price or bid amount to the preliminary GMP or estimated cost of the work;
 7. If applicable, which contingency will pay for the work;
 8. The signature of the Contractor's Representative.
- B. The contractor will not incur a third-party expense or award a subcontract prior to the Owner's written approval.

109.05 CONSTRUCTION CHANGE DIRECTIVES (CCD)

- A. The Owner may direct that the Work be changed without invalidating the Contract by issuing a CCD, a written statement prepared by the Owner's Representative. The CCD may result in additions, deletions, or other revisions to the Work to be performed.
- B. The CCD will be issued when changes to the Work are necessary, but the Owner and the Contractor are unable to reach agreement regarding the effect of the changes on the Contract Amount or Contract Time, or both.
- C. On receipt of a CCD, the Contractor will promptly proceed with the change in the Work involved.

109.06 FIELD ORDERS

- A. A Field Order is oral or written advice, direction, or instruction provided to the Contractor by the Owner's Representative, Inspector, or other authorized persons that is intended to assist in the completion of the Work without additional cost or Contract Time to either the Owner or the Contractor. Field Orders include, but are not limited to, identifying relevant Contract provisions in response to a Contractor's question, clarifying a contractual requirement, or directing minor changes to Contract Work that can be performed by the Contractor without additional cost and

without the need for additional Contract Time.

- B. If the Contractor believes that following the advice, direction, or instruction provided by a Field Order will result in additional costs, will require additional compensation or additional Contract Time, or is contrary to the requirements of the Contract Documents, or that the Field Order requires the performance of Extra Work, the Contractor will follow the requirements of subsection 109.17 regarding Claims for additional compensation and requests for additional Contract Time.

109.07 ARCHITECT'S SUPPLEMENTAL INSTRUCTIONS

- A. The Architect's Supplemental Instruction (ASI) is information provided by the Architect or Engineer on the Project to the Contractor regarding the performance of a portion of the Work. The information may either clarify how that portion of the Work is to be performed or direct that minor changes need to be made.
- B. The ASI is similar to a Field Order, in that the information or minor change is not intended to cause the Contractor to incur additional Contract Time or additional expense. If the Contractor believes that the ASI will result in additional costs, will require additional compensation or require additional Contract Time, or is contrary to the requirements of the Contract Documents, or that it requires the performance of Extra Work, the Contractor will follow the requirements of subsection 109.17 regarding Claims for additional compensation and requests for additional Contract Time.

109.08 CHANGE ORDER REQUESTS AND COMMUNICATION REGARDING THE WORK

- A. If the Contractor has a question about a specific portion of the Work, it will submit a Request for Information (RFI) to the Owner's Representative. The purpose of the RFI is to obtain information, clarify contract requirements, or verify information or contract requirements previously received.
- B. The response to the RFI will come from the Owner's Representative or the Owner's Architect or Engineer, depending on the Contract. That response may take the form of a Proposal Request (PR). The PR is not a Change Order or a direction to proceed with changes to the Work, but simply a request to the Contractor for information on how a proposed change to the Work might affect both the Contract Amount and the Contract Time.
- C. On receipt of a PR, the Contractor will respond in a timely fashion with a Change Order Request (COR) form. The COR form must show whether the proposed change, if accepted by the Owner, will increase or decrease the Contract Amount and the effect, if any, that it will have on Contract Time.
- D. If the COR proposes to increase or decrease the Contract Amount, it must reflect all costs, including, but not limited to, direct, indirect, and impact costs, profit, and overhead, that the Owner will be required to pay, or all costs that the Owner will save, if the proposed change is authorized. In addition, the COR will include all documentation necessary to support the Contractor's conclusion regarding the amount of costs that will be incurred or saved. Also, if the COR proposes that the amount of Contract Time should be increased, it will clearly state that fact on the COR and provide any and all documentation necessary to demonstrate why additional Contract Time is required.

- E. The Owner will rely on the information contained on the COR to make its decision whether to authorize a proposed change to the Work. If the COR is accepted, the Owner's Representative will sign the COR form indicating its agreement that the Work should be changed and that the Contract should be modified to reflect any change to the Contract Amount or Contract Time.
- F. When a COR is accepted by the Owner's Representative, the Owner and the Contractor have agreed to modify the Contract Amount and Contract Time, if necessary, as indicated on the COR by executing a Change Order. Once both the Contractor and the Owner have agreed on the COR, neither may later assert that a different amount of costs or a different amount of Contract Time should be included in a Change Order. The Contractor's signature on the COR when submitted to the Owner signifies the Contractor's agreement that the additional compensation stated on the COR is the total amount of compensation due to the Contractor for all costs, whether labeled as direct, indirect, impact, or otherwise, and that the additional Contract Time, if any, is the total amount of additional Contract Time resulting from the changed or Extra Work. In addition, when signed by the Contractor, the Change Order represents an accord and satisfaction regarding the changed or Extra Work and precludes the Contractor from seeking any additional compensation or Contract Time.

109.09-109.15 RESERVED FOR EXPANSION

109.16 CHANGE ORDERS

- A. The only authorized method for increasing or changing the amount of compensation, increasing the amount of Contract Time, or changing the scope of Work to be performed is through the execution of a written Change Order.
- B. Change Orders must be executed in advance when any changed or Extra Work for which additional compensation is due will be performed, except that they may be executed after the Work has been performed when the Owner has issued a CCD or the Contractor and the Owner have already agreed to the changes in compensation and Contract Time by executing a COR.
- C. A COR binds the Owner and the Contractor to execute a Change Order that reflects the terms of the COR, including any changes to the Contract Amount or Contract Time. See paragraph 109.08F. For administrative convenience, the Owner may take a number of CORs and combine them into a single Change Order.
- D. The Contractor's signature on the Change Order following the issuance of a CCD signifies the Contractor's agreement that the additional compensation stated on the Change Order is the total amount of compensation due to the Contractor for all costs, whether labeled as direct, indirect, impact, or otherwise, and that the total amount of additional Contract Time, if any, is the total amount of additional Contract Time resulting from the changed or Extra Work. When signed by the Contractor, the Change Order represents an accord and satisfaction regarding the changed or Extra Work and precludes the Contractor from seeking any additional compensation or Contract Time.
- E. A Change Order may be executed either before or after the Contractor performs Work already within the scope of the Contract Documents, but whose character has significantly changed, or Extra Work. When the Parties cannot agree in advance regarding the change in compensation or Contract Time that may be due, the Owner will issue a CCD and the Work will be performed by the Contractor, and a Change Order will be executed at a later date.
- F. If the Contractor performs Extra Work and additional compensation is due but the Contractor and the Owner disagree about the amount of compensation that is due or any Contract Time that might be changed, the Owner may issue a unilateral Change Order. A unilateral Change Order is not signed by the Contractor. This permits the Owner to pay the Contractor what the Owner believes is due, and does not prejudice the right of the Contractor to file a Claim pursuant to subsection 109.17 for additional compensation or Contract Time. If, however, after evaluation of the Contractor's Claim and documentation the Owner believes that it paid an incorrect amount or granted an inappropriate amount of Contract Time, the Owner may readjust the unilateral Change Order, either for or against the Contractor, as necessary.

109.17 CLAIMS FOR ADDITIONAL COMPENSATION, REQUESTS FOR ADDITIONAL TIME, AND REQUIRED NOTIFICATION

- A. This section outlines the exclusive procedure to be followed if the Contractor believes that it is entitled to additional compensation, additional Contract Time, or both. This section applies to all Claims for additional compensation and all requests for additional Contract Time, regardless of whether the basis for the Claim for additional compensation, or request for additional Contract Time, or both, stems from the performance of Extra or additional Work, changed Work,

excusable delays of any nature, suspension of Contract Work, or any other reason whatsoever.

- B. When the Contractor believes it is entitled to be paid more than the Contract Amount, it will notify the Owner's Representative in writing before beginning any Work for which additional compensation is sought. The written Notice must include:
1. A description of the event that requires additional compensation;
 2. The estimated amount of the additional cost to the Owner; and
 3. Any Contract provisions that support the Claim.
- C. When an event occurs that the Contractor believes entitles it to more time to complete the Work than the Contract Time permits, the Contractor will notify the Owner's Representative in writing when the event occurs. The written Notice must include:
1. A description of the event that permits additional Contract Time;
 2. An estimate of the delay that the event will cause; and
 3. Any Contract provisions that support the request for additional Contract Time.
- D. If the Contractor does not provide written Notice of a Claim for additional compensation or additional Contract Time in the time required, any subsequent Claim for additional compensation, additional Contract Time, or both is waived.
- E. If the Owner agrees with the Contractor's request for additional compensation or Contract Time, the Parties will negotiate a Change Order setting forth their agreement. If the Owner disagrees, the Contractor will do the following:
1. Continue promptly with the Work, including any extra or additional Work required by the Owner, so that the Project is not delayed;
 2. Keep complete records of all costs incurred for which reimbursement is sought (the Owner may also elect to keep such records to eliminate later confusion, and the keeping of such records by either the Contractor or the Owner does not mean that any Claim is valid);
 3. Submit documentation supporting the request for additional compensation, additional time, or both, as required in paragraphs F and G below.
- F. The Contractor's request for additional compensation must be supported by a Claims Package that includes (a) all documentation that establishes its right to additional compensation and (b) all documentation substantiating the amount of additional compensation to which it is entitled. The documentation must include the cost records required by subsection E above and all other relevant documentation, such as payroll records, purchase orders, quotations, invoices, estimates, profit and loss statements, daily logs, ledgers, and journals.
1. The documentation must be submitted within 45 days following completion of any Work for which a Claim of additional compensation has been made.
 2. If the Contractor contends that it will incur costs beyond the 45-day time period that should be included in the Claim, the Contractor will notify the Owner's Representative of this fact

in writing and provide an estimate of that cost. Thereafter, the Contractor will provide the Owner with additional documentation when the remainder of its additional costs are known.

3. The Owner will rely on the accuracy of the Claims Package to make decisions regarding future expenditures. Failure to submit the Claims Package within 45 days is a conclusive waiver of the Contractor's right to additional compensation.
 4. The Owner may request additional documentation from the Contractor at any time regarding a Claim. Failure to provide additional documentation within 30 days of the date requested and when such documentation exists constitutes a waiver of that portion of the Contractor's Claim to which the additional documentation relates.
- G. Any request for additional Contract Time must be supported by documentation that includes (a) a description of the event on which the request is based and (b) all information, including a schedule analysis, that shows that the event delayed completion of the Project as a whole.
1. The Contractor will submit the documentation within 45 days following the completion of the event that caused the delay and for which additional Contract Time is sought.
 2. The Contractor will provide additional documentation to support its request within 30 days if requested to do so by the Owner. Failure to provide that information is a conclusive waiver of that portion of the Contractor's request to which the additional documentation relates.
- H. Following receipt of all required documentation and after the Owner's Representative has had a sufficient period of time to review it in light of work responsibilities, the Owner's Representative and the Contractor's Project Manager will meet to attempt to resolve the matter if either requests it. If the Owner determines that the Contractor has not provided the documentation required by paragraph G above, it may still meet with the Contractor to discuss that and other matters.
1. If the Claim cannot be resolved, it is to be referred to persons with higher authority on the part of the Contractor and the Owner, who also have the authority to resolve the dispute. Those persons will meet for negotiations at a mutually agreed-upon time and place after having had a sufficient time to review the Claim.
 2. If the Claim is not resolved after this meeting, the Contractor and the Owner may agree to submit the matter to mediation. The mediator is to be chosen by mutual agreement. If a mediator cannot be agreed on, the Contractor and the Owner agree to present the Claim to a mediator selected by the Presiding Judge of Multnomah County, Oregon. The mediation fee is to be borne equally by the Owner and the Contractor.
 4. If the matter is not mediated or the dispute remains unresolved following mediation, either Party may pursue resolution through litigation in accordance with the requirements of these specifications.
 5. The procedures specified in this subsection are the sole and exclusive procedures for the resolution of disputes between the Owner and the Contractor arising out of or relating to the Contract, except that either may seek preliminary judicial relief or an injunction to avoid irreparable damage. Despite any injunctive relief, the procedures specified in this Contract for the resolution of Claims will remain applicable.

- I. The Owner is not obligated under the Contract to provide additional Contract Time or additional compensation unless documentation submitted by the Contractor establishes its entitlement to additional compensation, additional Contract Time, or both. The Parties agree that it is not a breach of the Contract to deny a request for additional compensation or request for additional Contract Time if the Contractor fails to submit adequate documentation substantiating its Claim.
- J. If the Contractor is entitled to additional compensation, it will receive 10 percent for both overhead and profit for any amount owed. If the Work for which additional compensation is provided was performed by a Subcontractor, the Owner will pay 10 percent for both profit and overhead for the costs incurred by the Subcontractor and an additional 5 percent for both overhead and profit to the Contractor.

109.18 RECORDS

- A. The Contractor and its Subcontractors will maintain all fiscal records relating to public contracts in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors will maintain any other records necessary to clearly document their performance of the Work and any Claims for additional compensation or requests for additional Contract Time arising from or relating to their performance under a public contract. Contractors and Subcontractors will make all records pertaining to their performance, Claims, or requests under a public contract accessible to the Owner at reasonable times and places, regardless of whether litigation has been filed as to such Claims.
- B. The Owner may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the books and records of any person who has submitted cost or pricing data according to the terms of the Contract to the extent that such books and records relate to such cost or pricing data. Any person who receives a Contract for which cost or pricing data are required will maintain such books and records that relate to such cost or pricing data for three years from the date of Final Payment under the Contract, unless a shorter period is otherwise authorized in writing.
- C. The Owner and its authorized representatives are to be entitled to inspect, examine, copy, and audit the books and records of the Contractor and its Subcontractors and suppliers as provided in paragraph A above. Such books and records will be maintained by the Contractor and all Subcontractors and kept accessible and available at reasonable times and places for a minimum period of three years from the date of Final Payment under the public contract, or until the conclusion of any audit, controversy, litigation, dispute, or claim arising out of, or related to, the public contract.
- D. The Contractor will produce all such records in Portland, Oregon, regardless of whether the records are produced pursuant to this provision of the Contract or as a result of a claim, litigation, arbitration, or other proceeding. The Contractor may produce the records elsewhere if it fully compensates the Owner for the reasonable costs of travel to and from the place where the records are produced and the reasonable cost of any employee's time in having to travel.

109.19 PARTIAL OCCUPANCY OR USE

- A. The Owner may occupy or use any completed or partially completed portion of the Work at any state of construction, provided such occupancy or use is not prohibited by regulatory agencies having jurisdiction over the Work.

- B. Before partial occupancy or use, the Owner's Representative and the Contractor will jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Thereafter a list is to be prepared recording the items that need correction and completion. This list is not a "punch list" and does not represent that Substantial Completion has occurred. Either the Owner's Representative or the Contractor may inspect the portion separately if the other refuses to join in an inspection in a timely fashion.
- C. Partial occupancy or use of a portion or portions of the Work does not constitute the Owner's Acceptance of the Work not complying with the requirements of the Contract Documents, nor does it waive rights the Owner has to completion of the Contract in accordance with the requirements of the Contract Documents.
- D. The Owner is also entitled to occupy or use all or a portion of the Work on Substantial Completion. Occupancy or use on Substantial Completion does not constitute the Owner's Acceptance of the Work not complying with the requirements of the Contract Documents, nor does it waive rights the Owner has to completion of the Contract in accordance with the requirements of the Contract Documents.
- E. When the Work is substantially complete, regardless of whether the Owner takes possession of or occupies all or a portion of the Work, the Contractor and the Owner will prepare a list of items, known as a "punch list," that remain to be completed or corrected. The Contractor remains responsible to complete the Work in accordance with the Contract Documents regardless of whether an item is omitted from the punch list.
 - 1. The Contractor is required to proceed promptly to complete the items on the punch list and any other items that may be discovered to be incomplete or incorrect regardless of whether they are on the punch list or not. If the Contractor fails to complete the punch list within 30 days or such other time as the Owner's Representative may allow, the Owner may terminate any further services of the Contractor under the Contract and complete the punch list items remaining to be completed or corrected with the Owner's own forces or by hiring another Contractor to perform the punch list Work. Costs of performing the punch list Work by the Owner will be deducted from any payments otherwise due the Contractor.

2. The Contractor will notify the Owner when the punch list Work is complete, and Final Payment will then be made in accordance with subsection 109.21. After receipt of that Notice, the Owner will inspect the Work to determine whether the punch list is complete as provided in subsection 109.21B.
 3. If the Work is not complete despite the Contractor's Notice that the punch list items are complete, and the Owner has hired an Architect or Engineer to assist it on the Project, the Contractor will pay costs for the Architect or Engineer's services if more than two inspections of the Work are required because the punch list remains incomplete.
 4. On Substantial Completion, the Owner will be responsible for utilities, insurance, security, maintenance, and damage to Work caused by the Owner's agents and employees unless otherwise provided in the Certificate of Substantial Completion. The Contractor remains responsible for damage to Work caused by its Subcontractors, agents, and employees during the performance of punch list Work.
- F. Warranties for products and services provided by the Contractor will commence on issuance of the Certificate of Substantial Completion, unless otherwise provided by the Contract Documents or agreed to in writing by the Owner's Representative.

109.20 PAYMENTS AND RETAINAGE

- A. The Owner will pay the Contractor the Contract Amount for the Work. See subsection 105.01 regarding the Owner's Representative's authority.
1. The Contractor will submit to the Owner's Representative a Schedule of Values allocating costs to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner's Representative may require. This Schedule, unless objected to by the Owner's Representative, will be used as a basis for reviewing the Contractor's Applications for Payment.
 2. The Owner's Representative may reject any portion of any Schedule of Values that is reasonably believed to not reflect an accurate estimation of costs and substitute a fair estimate. Rejection of any part of the Schedule of Values does not change any subcontract amount entered into by the Contractor. Failure to object to any portion of the Schedule of Values is not an indication that the Owner's Representative agrees that the costs listed are accurate. Instead, the Schedule is used only for the purpose of making payments.
- B. The Contract Amount is to be full compensation for all Work on the Project of whatever nature, including all Incidental Work, including, but not limited to, formwork, falsework, shoring, and cribbing that is necessary to perform the Work. In Unit Price Contracts, no payment will be made for Incidental Work until the Work for which the Incidental Work is required is in place or has been completed. If the Contract Amount is based on a Lump Sum and only a portion of the Work for which payment is made has been completed, then only a portion of the cost of the Incidental Work will be paid.
- C. The cost of Bonds and insurance is recoverable as part of the Contractor's Mobilization costs if the Contract Documents or an approved Schedule of Values provide for a separate payment for Mobilization. Otherwise, no separate payment is made for such costs.

- D. The Contractor may, but is not required to, submit Applications for Payment twice per month on this Project as set forth below. Because the Owner wants to ensure that Subcontractors are paid amounts owed in a timely fashion, if the Contractor elects to submit two applications for payment per month, the Contractor is required to make payments to its Subcontractors twice per month as well.
- E. Within seven Calendar Days from the date that any payment is sent by the Owner to the Contractor, the Contractor will pay its Subcontractors for Work performed during the period covered by the Application for Payment regardless of whether a Subcontractor agrees to some different schedule. The Contractor is required to take all necessary good-faith actions to ensure that it makes payment to its Subcontractors. In the event of a dispute, the Contractor will pay the portion of the Work not in dispute and timely resolve the amount that is in dispute.
- F. To receive payment twice per month, the Contractor will submit an Application for Payment showing Work completed within the past month that is consistent with the Schedule of Values approved by the Owner. In addition, the Contractor will submit documentation required by the Owner's Representative that substantiates its request for payment. Thereafter, the Contractor will be paid in accordance with the Application for Payment to the extent that it is consistent with the approved Schedule of Values.
1. The Application for Payment and supporting documentation are to be submitted twice each month.
 2. The Application for Payment may include costs incurred as a result of complying with Change Directives, but since the price for the changed Work has not been agreed on, the Owner may pay all or a portion of the Contractor's cost depending on the Owner's determination of a reasonable cost for the Work performed.
 3. If the Application for Payment is filled out incorrectly, or if there is any defect or impropriety in any submitted Application for Payment, or when there is a good-faith dispute, the Owner's Representative will so notify the Contractor within 15 days stating the reason or reasons the Application for Payment is defective or improper or the reasons for the dispute. A defective or improper Application for Payment, if corrected by the Contractor within seven days of being notified by the Owner, will not cause a payment to be made later than 30 days after receipt of the original Application for Payment from the Contractor, or 15 days after the payment is approved by the Owner's Representative, whichever is the earlier date.
 4. The Application for Payment may not request payment for work that the Contractor contends it does not owe to a Subcontractor or supplier.
- G. The Owner's Representative has discretion, but is not required, to approve payments to the Contractor of up to 100 percent of the cost of materials and equipment that will be incorporated into the Work that are not yet incorporated, but suitably stored on the Project site, or at some other location agreed on in writing, if the following conditions are met:
1. The value of the materials or equipment is greater than \$5,000.
 2. The Contractor submits bills of sale or other documentation satisfactory to the Owner establishing the Contractor's proof of payment and title to the materials or equipment and that the materials are free and clear of liens, claims, security interests, or other

encumbrances. When payments are made, the Contractor guarantees that title to all materials and equipment covered by a progress payment, whether incorporated in the Project or not, will pass to the Owner on receipt of such payment by the Contractor, free and clear of all liens, claims, security interests, or encumbrances.

3. The Contractor will protect the Owner's interest in the materials or equipment, including applicable insurance and transportation to the site. In no event does payment for such materials require the Owner to pay for replacement materials if the original materials or equipment for which payment was made is damaged or destroyed prior to incorporation into the Work. By submitting a request for payment, the Contractor accepts full responsibility to continue to protect the stored materials and equipment from the elements and against loss or damage.
 4. The materials or equipment meet Contract requirements, the Contractor has provided proof that the materials or equipment conform to Contract requirements and has provided an opportunity for the Owner to inspect the materials, and the materials are in a form ready for incorporation into the Project and are clearly marked and identified as being specifically fabricated, produced, and reserved for use on the Project.
- H. The Owner has discretion to withhold amounts from any progress payment otherwise due the Contractor if it receives Claims for damages or costs from third parties as a result of the Contractor's operations and the Owner determines that such withholding is necessary to protect the Owner's interests. Such withholding may continue until the Claim is resolved.
- I. The Owner may retain and hold back up to 5 percent of amounts otherwise due the Contractor as Retainage. Retainage will be held and paid to the Contractor as part of the Final Payment of the Contract Amount. The Contractor may deposit cash, Bonds, or securities with the Owner or in any bank or trust company to be held in lieu of cash Retainage for the benefit of the public contracting agency. In such event, the Owner will reduce the Retainage in an amount equal to the value of the Bonds and securities and pay the amount of the reduction to the Contractor in accordance with ORS 279C.560 and ORS 279C.570. Interest on such Bonds or securities will accrue to the Contractor.
1. As work progresses, the Owner may reduce the amount of the Retainage and may eliminate Retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract Documents is completed if, in the opinion of the Owner's Representatives, the Work is progressing satisfactorily. Elimination or reduction of Retainage will be allowed only on written application by the Contractor, which application will include written approval of the Contractor's Surety.
 2. When the Work is 97.5 percent completed, the Owner may, at its discretion and without application by the Contractor, reduce the Retainage to 100 percent of the value of the Contract Work remaining to be done.
- J. The Owner's Representative may disapprove a payment previously made, withhold money from a future progress payment, or disapprove of an invoice submitted by the Contractor in whole or in part, if:
1. The Work has not progressed to the point indicated by the Contractor's Submittal;
 2. Defective, unsatisfactory, or improper work is discovered;

3. The Contractor fails to make payments to employees, Subcontractors, and suppliers as required by the Contract;
 4. The Contractor violated material terms and conditions of the Contract that remain to be remedied;
 5. The Contractor performed unsatisfactory Work for which payment was sought;
 6. The Owner has a monetary Claim against the Contractor that the Contractor has not yet paid;
 7. The Contractor failed to submit a Construction Schedule or updated schedule required by the Contract; or
 8. The Contractor was exceeding the limits of Work specified in the Contract.
- K. The Contractor is not entitled to interest on money purposely withheld for any of the reasons specified in paragraph J above.
- L. Progress payments reflect the best judgment of the Owner's Representative about payment at the time payment is made. Such payments, however, do not constitute acceptance of the Work.
- M. The Contractor will provide the District Controller's Office with a list of personnel authorized to receive Contract payments. No payment will be released to an unauthorized person. In addition, no payment will be made if the estimate submitted by the Contractor is less than \$1,000, unless approved in advance by the Owner's Representative.
- N. If the Contractor fails to make timely advance payments or progress payments to its Subcontractors, the Owner is entitled to take any action permitted by law, including, but not limited to, the following:
1. Withhold all or a part of any progress payment until the Contractor makes payment;
 2. Find that the Contractor is not a "responsible bidder or proposer" as those terms are used in Oregon law;
 3. Pay the Subcontractor that has not received proper payment directly; and
 4. Terminate the Contract for default as provided in subsection 108.12.

109.21 COMPLETION AND FINAL PAYMENT

- A. The Contractor will notify the Owner's Representative in writing when it considers that all the Work required by the Contract Documents is complete. The Notice will be more than an invoice that requests the balance of the Contract Amount. Instead, the Notice must plainly call to the Owner's attention the Contractor's belief that all Work has been completed in accordance with the Contract. Retainage does not have to be returned to the Contractor until all Work required by the Contract is complete.
- B. Within 15 days of receipt of the Notice, the Owner's Representative will either preliminarily accept the Work or notify the Contractor of Work yet to be performed on the Contract. This Work may consist of items on the punch list that have not been completed or corrected, or other

items that have come to the Owner's attention. If the Work is preliminarily accepted as complete, the Owner will notify the Contractor and prepare a Certificate of Completion. If the Owner's Representative does not accept the Work as complete after receipt of the Notice, the Contractor will complete or correct the items remaining and then again notify the Owner that Work is complete.

1. The Contractor is required to proceed promptly to complete the items remaining. If the Contractor fails to do so within 30 days or such other time as may be allowed by the Owner's Representative, the Owner may terminate any further services of the Contractor under the Contract, complete the items remaining to be completed or corrected with the Owner's own forces or by hiring another Contractor to perform the punch list Work. Costs of performing the punch list Work will be deducted from any payments otherwise due the Contractor.
 2. If the Owner has hired an Architect or Engineer to assist it on the Project, the Contractor will pay costs for the Architect or Engineer's services if more than one inspection of the Work is required because remaining portions of the Work are incomplete.
- C. If the Contractor disagrees with the Owner's conclusion that the Work is not complete, the Contractor nevertheless will perform the Work that the Owner believes is required by the Contract. If the Contractor then believes that the performance of such Work entitles it to additional compensation, additional Contract Time, or both, it will follow the requirements of subsection 109.17. After performing the Work that the Owner believes is required by the Contract, the Contractor will then again provide the Notice required by paragraph A regarding the completion of Work.
- D. Following preparation of the Certificate of Completion, the Owner's Representative will send it to the Contractor for the Contractor's signature. After return of the Certificate, the Owner's Representative will submit it, together with the estimate of the Final Payment due, to the Contractor for ultimate acceptance of the Project. After acceptance, the Contractor will be paid within 30 days.
- E. Applications for Payment submitted by the Contractor to the Owner during the course of the Project are made to receive progress payments and are not binding on the Owner. If any previous application is discovered to be inaccurate, any resulting overpayment or underpayment to the Contractor may be corrected in the next payment or the Final Payment. Correction of overpayments or underpayments between the Contractor and any Subcontractor or supplier is the sole responsibility of the Contractor.
- F. The Final Payment is to be the difference between the Contract Amount, as adjusted by any authorized Change Orders, and the sums of all payments previously made, plus any Retainage held by the Owner.
1. The Owner may deduct against any progress payment, including the Final Payment, any amount previously paid to the Contractor in error or any other amount owed to the Owner for any reason resulting from the Contractor's work under the Contract.
 2. If the Owner declares a default of the Contract and the Contractor's Surety fulfills its responsibility to ensure completion of the Work, then the Contractor agrees that all progress payments not yet made and all Retainage held by the Owner will be paid to the Surety and not to the Contractor.

3. The Owner may deduct against the Final Payment additional Retainage in the amount of 25 percent of amounts earned that are to be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by law.

G. Acceptance of the Work will not occur until:

1. The Contractor provides the Notice referenced in paragraph A above, the Contractor prepares and submits the form referenced in paragraph H below, the Owner's Representative presents a report recommending acceptance to the District, and that report is approved;
2. The Contractor has submitted to the Owner all Project record documents, manuals, operation instructions, directions, safety manuals or guides, and any other deliverables required by the Contract Documents;
3. All rights, warranties, title, and claims to materials, equipment, or systems supplied under this Contract have been validly transferred to the Owner or the Owner's assignee; and
4. All necessary inspections, approvals, licenses, and Permits have been successfully obtained or properly excused, and the Project may be occupied and used without restriction.

Thereafter, Final Payment will be made within 30 days.

H. At the conclusion of the Work and as a condition of Final Payment, the Contractor will sign an acknowledgment form:

1. Acknowledging payment of sums previously paid to the Contractor except for Final Payment.
2. Releasing all monetary Claims against the Owner other than the receipt of Final Payment. If the Contractor has submitted a Claim to the Owner pursuant to subsection 109.17, however, the Contractor may state that a Claim has been submitted and not yet resolved. If that occurs, no waiver of the Claims stated on the form will be deemed to have occurred. All Claims not specifically referenced on the form, however, will be deemed to have been waived.
3. Certifying that:
 - a. All amounts due for labor, materials, and other obligations due to the Contractor's own workers, its Subcontractors, and its suppliers have been fully paid in accordance with Oregon law, ORS Chapter 279C, except for amounts that might be due on Final Payment or if a Claim submitted pursuant to subsection 109.17 that is specifically referenced on the form is later paid by the Owner in whole or in part; and
 - b. If there are outstanding Claims against the Contractor from any person, including the Owner, that are disputed by the Contractor, such Claims are payable by its Performance Bond and Payment Bond, by its insurance carrier, or by the Contractor itself.

109.22 LITIGATION

- A. Any legal proceeding of any nature whatsoever brought by the Contractor against the Owner that asserts a breach of the Contract, a Claim of quantum merit, a declaratory judgment proceeding, or any other legal or equitable Claim related to, or arising from, Work performed pursuant to the Contract Documents must be brought within one year of the date that Final Payment is made to the Contractor, regardless of whether the Contractor is aware of the legal Claim it might have during that time. If the legal proceeding is not brought within that one-year period, the Contractor expressly waives any and all Claims that are in any way related to the Contract.
- B. For purposes of this subsection, payment is considered made when the District sends a check or warrants to the Contractor that contains the Final Payment. The subsequent payment of minor amounts to the Contractor that constitute less than 2 percent of the total Contract Amount, or the payment of Claims made pursuant to subsection 109.17, does not affect the date when Final Payment is considered to have been made.
- C. In the event of a dispute, the Contractor and the District agree to bear the cost of producing their own employees for deposition including, but not limited to, travel costs, per diem expenses, and the cost of employee time. The Parties further agree that if court rules or the court itself permits the deposition of expert witnesses, the Party seeking the testimony of the expert witness will bear that witness's reasonable costs of travel, reasonable preparation costs, and costs for time while in transit.
- D. If litigation has commenced or is expected, the Contractor and its representatives, including, but not limited to, the Contractor's attorneys, agree to make any requests for documents, including public records requests, through the district counsel.

110 BACKGROUND CHECKS AND BADGING

North Clackamas School District's priority is the safety of our students and staff. Accordingly, construction contractors must comply with the below. Failure to do so will result in immediate District action, up to and including, contract termination and immediate removal from the job site.

Contractor certifies that:

1. All workers and subcontractors have been made aware of and will follow the *Maintaining Appropriate Boundaries* section below.
2. All workers and subcontractors are not allowed direct, unsupervised contact with students, unless directly accompanied by District staff or a Project Superintendent or Bond Project Manager who has passed a District background check. Alternatively, if worker or subcontractor is unaccompanied and with the opportunity of direct, unsupervised contact with students, Bond Superintendent or Project Manager shall ensure that worker or subcontractor has passed a nationwide background check. Workers or subcontractors convicted, or arrested without resolution, of the crimes listed in ORS 342.143(3)(a), constitutes failure of the background check.

110.01 LONG-TERM CONTRACTORS

Long-term contractors, such as project managers, shall be fingerprinted and background checked by District. The Bond Office will initiate the process with the District Human Resources Department.

Long-term contractors shall wear identification similar to a District employee badge. The Bond Office will initiate the process with the District Facilities Department to produce the badge.

110.02 SHORT-TERM WORKERS AND SUB-CONTRACTORS

Short-term workers and sub-contractors, such as maintenance and service workers, shall be background checked by contractor, if there is the opportunity for direct, unsupervised contact with students. The contractor will control this process and certify compliance for the duration of the contract.

1. Contractor shall provide the Project Manager with a listing of workers or short-term contractors whom have satisfactorily passed the background check.
2. The Project Manager will provide the building's main office with a current listing of those individuals.
3. When cleared, if workers or short-term contractors will be entering an area where they may have potential direct or unsupervised contact with students, they first check in at the main office to receive identification prepared by the individual building site, and properly wear and display said identification. Identification will be returned to the main office upon completion of the visit. Short-term business restricted to the main office is exempt from the badge requirement.

All other workers and short-term contractors shall be directly accompanied by a person who has undergone a District background check and who will have identification similar to a District employee badge.

110.03 ARCHITECTS, ENGINEERS, AND CONSULTANTS

There is no background check requirement for architects, engineers, and consultants as they will not have direct, unsupervised contact with students. They will be accompanied at all times by a District staff member, a Project Superintendent, or Bond Project Manager.

Architects, engineers, and consultants shall wear identification as prepared and controlled by individual building sites. Identification will be returned to the main office upon completion of the visit. Short-term business restricted to the main office is exempt from the badge requirement.

110.04 MAINTAINING APPROPRIATE BOUNDARIES

Contractors and their workers should not be interacting with students in any way. The following is a list of inappropriate interactions, which apply on or off campus, during work hours, and during non-work hours. Inappropriate interaction with students will result in immediate District action, up to and including, contract termination and immediate removal from job site.

- Invading personal space; being too close in physical proximity.
- Touching students in any way.
- Maintaining intense eye contact.
- Making comments that are physical in nature or may have sexual overtones.
- Holding conversations with students.
- Spending time alone with a student, intentionally or unintentionally.
- Meeting with a student off campus.
- Receiving from or writing communication to a student (including note, texts, social media, email, chat rooms).
- Leering or "checking out" students' appearance, clothing, activity, or behavior.

-Conversations with others about students' appearance, clothing, activity, or behavior.

Any individual that becomes aware of a situation where any worker on a job site has or may have failed to maintain appropriate boundaries as described above, must immediately report to the Project Superintendent, who will immediately report to the District's Risk Manager.

111 ENVIRONMENTAL HEALTH AND SAFETY PROCESS AND PROCEDURES

The North Clackamas School District (NCSD) EHS Processes and Procedures Manual establishes minimum environmental health and safety performance expectations of construction contractors working on NCSD sites.

Overview

The following processes and procedures define NCSD's expectations which meet and in some case exceed the requirements of applicable regulatory agencies.

NCSD provides a copy of this EHS Processes and Procedures Manual to all firms who receive a bid award. The contract that follows a bid award indicates the firm is responsible for knowing and complying with the information provided in this Manual. NCSD expects these performance requirements to be understood prior to work commencing, be included in a project specific EHS Plan and be strictly complied with.

111.01 RELATED REQUIREMENTS

Contractor shall comply with and be responsible for the enforcement of all federal, state and local codes, ordinances, guidelines or other governing requirements of any agency having jurisdiction (AHJ) over employee health and safety on the Project site, regardless of the requirements of the Agreement or District Requirements.

It is the Contractor's responsibility to ensure their workers and subcontractor employees have a good working knowledge of their EHS Processes and Procedures along with those required by NCSD.

111.02 GENERAL

- A. No person shall be required or instructed to work in surroundings or under conditions that are unsafe or dangerous to his/her health.
- B. Contractor shall be responsible for initiating and maintaining a safety and health program that complies with the State of Oregon – Occupational Safety and health Administration (OR-OSHA).
- C. Each employee is responsible for complying with applicable safety and occupational health requirements, wearing prescribed safety and health equipment, reporting unsafe conditions/activities, preventing avoidable accidents, and working in a safe manner.
- D. Safety and health programs, documents, signs, and tags shall be communicated to employees in a language that they understand.
- E. Worksites with non-English speaking workers shall have a person(s), fluent in the language(s) spoken and English, on site when work is being performed, to translate as needed.

- F. Contractor will provide all necessary barricades, safety signs, stanchions, safety cones or safety warning tape as required to isolate and protect unsafe work areas from workers, vehicle traffic or pedestrians.
- G. The Contractor shall erect and maintain a safety and health bulletin board in an area commonly accessed by workers. The bulletin board shall be maintained current, in clear view of on-site workers, and protected against the elements and unauthorized removal. It shall contain at least the following safety and health information:
- i. Map denoting the route to the nearest emergency care facility;
 - ii. Emergency phone numbers;
 - iii. Other public information postings as may be required by any AHJ specifically including but not limited to OR-OSHA; and
 - iv. Project Safety Plan (PSP).
- H. Before initiation of work at the job site, Contractor shall develop a PSP, written in English for the specific work and hazards of the contract and implementing in detail the pertinent requirements to the satisfaction of the District. The Contractor shall address each of the elements/sub-elements of the Project and shall provide the information required with appropriate sections and appendices including but not limited to the following:
- i. Pre-Task planning;
 - ii. Fall protection and personal protective equipment;
 - iii. Compressed gasses and electrical safety;
 - iv. Powered industrial trucks, cranes/hoists/rigging and other power equipment;
 - v. Confined space management;
 - vi. Fire prevention, including fire extinguisher requirements, fire system work/red tag process and welding, cutting, brazing/hot work permit (including fire watch after work is completed);
 - vii. Hazardous material control, i.e., Lead Compliance Plan when working with lead, Asbestos Hazard Abatement Plan when working with asbestos, etc.
- I. The PSP will be developed by qualified personnel and will be signed by that person. The Contractor shall be responsible for documenting the qualified person's credentials.
- J. Contractor's PSP will be job specific and will include work to be performed by subcontractors and measures to be taken by the Contractor to control hazards associated with materials, services or equipment provided by suppliers.
- K. To assure compliance with this section, the Contractor may be required to prepare for review specific safety and occupational health submittal items. These submittal items may be specifically required by this or other sections or may be identified in the Contract or by the District.

No additional compensation or time extensions shall be provided to the Contractor for additional submittals under this section.

- L. The District or its designated representative may immediately stop work when an employee is deemed to be in imminent danger of serious injury or loss of life.

No additional compensation or time extensions shall be provided to Contractor for delays incurred under this section.

Work shall not resume until the danger to any and all employees has been mitigated to the satisfaction of the District or its Representative.

- M. The Contractor shall employ a competent person at each project to function as the Site Safety and Health Officer (SSHO). The SSHO will manage the Contractor's PSP (This may be a collateral duty responsibility). The person(s), at a minimum, must have completed the 10 hour OSHA Construction Safety class or an equivalent course applicable to the work to be performed and given by qualified instructors. Such training shall have been within the last three (3) years. An SSHO shall be on-duty at all times when work is being performed and shall be responsible for enforcing and implementing the Contractor's Safety and Health program in accordance with the accepted PSP..
- N. Contractor is responsible for assuring subcontractor compliance with the safety and occupational health requirements contained in this section.
- O. A hazard communication program shall be implemented by the Contractor.
- P. The written hazard communication program shall address, at a minimum, the following: training (to include potential safety and health effects from exposure), labeling, current inventory of hazardous chemicals on site, and the location and use of Safety Data Sheets (SDS's).
- Q. Contractor is responsible to ensure compliance with State law and District policies surrounding the use and possession of weapons, tobacco, alcohol and drugs on District property.

111.03 INSPECTIONS

- A. The PSP shall provide for frequent safety inspections, conducted by competent persons, of the work sites, material and equipment to ensure compliance with the PSP
- B. In addition, Contractor quality control (QC) personnel – as part of their QC responsibilities – shall conduct and document daily safety and occupational health inspections in their daily QC logs.
- C. Identified safety and health issues and deficiencies, and the actions, timetable, and responsibility for correcting the deficiencies, shall be recorded in inspection reports. Follow up inspections to ensure correction of any identified deficiencies shall be conducted and documented in a like manner.
- D. The Contractor shall establish a safety and occupational health deficiency tracking system that lists and monitors the status of safety and health deficiencies in chronological order. The list will be updated daily, and will provide the following information:
 - i. Date deficiency identified;
 - ii. Description of deficiency;
 - iii. Name of person responsible for correcting deficiency;
 - iv. Projected resolution date; and
 - v. Date actually resolved.
- E. The Contractor will immediately notify the District's Risk Manager of any OR-OSHA or other regulatory agency inspection and provide an opportunity to accompany the Contractor on the inspection. (The inspection will not be delayed due to the non-availability of the District's Risk Manager.) The Contractor shall provide the District's Risk Manager with a copy of any citations or reports issued by the inspector and any corrective action responses to the citation(s) or report(s).

111.04 INDOCTRINATION AND TRAINING

- A. A qualified person(s) shall conduct all training required by this section.
- B. Employees shall be provided safety and health indoctrination prior to the start of work and continuing safety and health training to enable them to perform their work in a safe manner. Employee indoctrinations will be documented in writing by date, name and content.
- C. Indoctrination and training shall be based on the safety and health program of the Contractor and shall include but not be limited to:
 - i. Requirements and responsibilities for accident prevention and maintaining safe and healthful work environments;
 - ii. General safety and health policies and procedures and pertinent provision of this manual;
 - iii. Employee and supervisor responsibilities for reporting all accidents;
 - iv. Provisions for medical facilities and emergency response and procedures for obtaining medical treatment or emergency assistance;
 - v. Procedures for report and correcting unsafe conditions or practices;
 - vi. Job hazards and the means to control/eliminate those hazards, including applicable position and/or activity hazard analyses; and
 - vii. Specific training as required by this section.
- D. All visitors to the Site will be briefed by a qualified person on the hazards to be expected on the site and the safety and health controls required (i.e., hard hat, foot protection, etc.). The person-in-charge of the Site will assure that all visitors entering the site are properly protected and are wearing or provided with the appropriate personal protective equipment (PPE). Site personnel should maintain a stock of common PPE (i.e., hard hats, eye protection, ear plugs, reflective vests, etc.) for use by visitors. The site manager may require an escort for all visitor while on site.

Contractor shall have the right to refuse Site access to ANYONE not having attended the Contractor's safety briefing or wearing the appropriate PPE.

Contractor's briefing under this section D shall not be overly lengthy, technical in nature or create undue burden by visitors to access the Site. Access to the site shall not be withheld without justifiable reason.
- E. A visitor sign-in log will be maintained on site.
- F. Safety Meetings shall be conducted to review past activities, plan for new or change operations, establish safe working procedures for anticipated hazards, and provide pertinent safety and health training and motivation.
- G. Meeting shall be conducted at least once a month for all supervisors on the project location and at least once a week by supervisors or foremen for all workers.
- H. Meetings shall be documented, including the date, attendance, subjects discussed, and names of individuals who conducted the meeting. Documentation shall be maintained and copies provided to the District on request.
- I. The District Project Manager will be informed of all scheduled meetings in advance and be invited to attend.
- J. When hazardous substances are brought onto the job site, all employees potentially exposed to the substance will be advised of information in the SDS for the substance.

- K. A copy of the SDS for each hazardous substance at the project will be maintained in an inventory, will be provided to the District's Project Manager, and will be made available to all potentially exposed employees. For emergency response purposes, each entry in the inventory shall include the approximate quantities, (e.g., gallons, pounds) that will be on site at any given time. In addition, a site map will be attached to the inventory showing where inventoried hazardous substances are stored. The inventory and the site map will be updated as frequently as necessary to ensure accuracy and will be posted in a conspicuous location that is accessible by the general public and workers on site at any time.
- L. Contractor shall provide training in handling emergency situations that may arise in the activities or use of equipment on the project.
- M. All persons who may have occasion to use emergency and rescue or lifesaving equipment shall be familiarized with the location of the equipment, trained in the proper use of the equipment and its capabilities and limitations, and medically qualified for its use.
- N. Contractor will maintain on-site at all time, a minimum of one (1) person who is first aid and CPR trained, who will be available to assist during emergency events. Contractor shall maintain the following supplies:
 - i. Mask for mouth-to-mouth rescue breathing with a one-way valve;
 - ii. Appropriate PPE required in case of a medical emergency;
 - iii. Means by which first responder may summon medical aid; and
 - iv. Sufficient and appropriate medical supplies to stabilize an injured person until professional medical care can arrive at the Site.

111.05 PHYSICAL QUALIFICATION OF WORKERS

- A. **At no time and under no circumstance** while on the Site, may workers use or be under the influence of alcohol, narcotics, intoxicants, or similar mind-altering substances. Workers found under the influence of consuming such substances will be immediately removed from Site. Contractors shall enforce the drug-free workplace requirements specified by the District as part of their PSP.
- B. Operators of any equipment or vehicle shall be able to read and understand the signs, signals, and operating instructions in use.

111.06 ACCIDENT REPORTING AND RECORDKEEPING

- A. All accidents and "near-misses" (events where a high probability of worker injury existed but did not occur) that occur incidentally to an operation on the Site will be investigated, reported, and analyzed as prescribed by the District Project Manager.
- B. Employees are responsible for reporting all injuries or occupationally related illnesses as soon as possible to their employer or immediate supervisor.
- C. Contractor, subcontractors and immediate supervisors are responsible for reporting all injuries to the District Risk Manager within 24 hours.
- D. No supervisor shall decline to accept a report of injury from a subordinate.
- E. An accident that appears to have any of the consequences listed below shall be **immediately** reported to the District's Project Manager. If the determination of one of these consequences is

not readily apparent at the time of the accident but determined at a later tie, the accident should then be immediately reported to the District's Project Manager. These accidents will be investigated in depth to identify all causes and to recommend hazard control measures. The District's Project Manager shall immediately notify the Risk Management office of all serious accidents and follow up with official accident reports as prescribed by regulation. Contractors are responsible for notifying OSHA when one or more of their employees are seriously injured.

- i. Fatal injury;
 - ii. Permanent partial disability injury;
 - iii. Permanent total disability injury;
 - iv. Three or more persons admitted to a hospital; or
 - v. Property damage in an amount specified by the District.
- F. Except for rescue and emergency measures, the accident scene shall not be disturbed until it has been released by the investigating official. Contractor is responsible for obtaining appropriate medical and emergency assistance and for notifying, fire, law enforcement, and regulatory agencies. Contractor must assist and cooperate fully with District representatives conducting investigation(s) of the accident.
- G. Daily records of all first aid treatments not otherwise reportable shall be maintained on prescribed forms and furnished to the District Project Manager or Risk Manager upon request.
- H. In addition to any other applicable requirements of this section, the Contractor shall:
 - i. Maintain records of all exposure and accident experience incidental to the work (this includes exposure and accident experience of the Contractor and subcontractors and,
 - ii. As a minimum the records shall include exposure work hours and a log of occupational injuries and illnesses – OSHA Form 300 or equivalent; provide a current copy of OSHA Form 300 or equivalent to the District Project Manager, or Risk Manager upon request;
 - iii. Maintain health hazard assessment documentation and employee exposure monitoring to chemical, biological, and physical agents as required. Provide this information to employees who are characterized by these assessments and exposure monitoring in accordance with OSHA requirements. Immediately notify the District Project Manager of any exposure in excess of the limits and the hazard control measures that have been taken to reduce or eliminate such exposures.
 - iv. Submit project work hours to the District Project Manager. Work hours include all hours on the project where an employee is in an on-duty pay status.

111.07 EMERGENCY PLANNING

- A. Emergency plans to ensure employee safety in case of fire or other emergency shall be prepared, in writing, and reviewed with all affected employees. Emergency plans shall be tested to ensure their effectiveness.
- B. Plans shall include escape procedures and routes, critical operations, employee accounting following an emergency evacuation, rescue and medical duties, means of reporting emergencies and person to be contacted for information or clarification.
- C. On-site emergency planning shall be integrated with off-site emergency support. (Documentation of specific on-site emergency services shall be made. This can include written agreements,

memorandum for record, telephone conversation logs, etc. The emergency services provider should be offered an on-site orientation of the Site and associated hazards.)

- D. Planning for any operation shall include the total system response capabilities to minimize the consequences of accidents or natural disaster and shall consider communications, rescue, first aid, medical, emergency response, emergency equipment, and training requirements.
- E. The number of persons permitted in any location shall be limited to rescue and escape capability.
- F. Emergency alert systems shall be developed, tested and used to alert all persons likely to be affected by existing or imminent disaster conditions and to alert and summon emergency responders.
- G. Emergency telephone numbers and reporting instructions for ambulance, physician, hospital, fire and police shall be conspicuously posted at the worksite.
- H. Workers working alone in a remote location or away from other workers shall be provided an effective means of emergency communications. This means of communication could include a cellular phone, two-way radio, or other acceptable means. The selected communication must be readily available (easily within the immediate reach) of the workers and must be tested prior to the start of work to verify that it effectively operates in the area/environment. A worker check-in/check-out communication procedure shall be developed to assure employee safety.

111.08 SITE SECURITY

- A. Contractor will provide all necessary fencing and barricades to establish a secure perimeter for the site. If unarmed private security is deemed necessary to monitor the Site, the Contractor shall contract with a vendor that is certified by the Oregon Department of Safety and Security Training.
- B. See attached document titled "Background Checks and Badging"

NORTH CLACKAMAS SCHOOL DISTRICT

CONTRACTOR

Signature

Date_____

Signature

Date_____