

City of Portland, Oregon
Bureaus of
General Services and Parks

**GENERAL CONDITIONS
OF THE CONTRACT
FOR CONSTRUCTION – ‘B’**

January 2002 Edition

(Revised: January 2006)

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GENERAL SERVICES & PARKS

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101 DEFINITIONS AND ABBREVIATIONS

101.01 DEFINITIONS

Acceptance of Work

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

Act of God

An Act of God is 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 City'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 shall be deemed to be included in the original Contract Amount and shall 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 is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

Architect's Supplemental Instructions (ASI)

Information provided to the Contractor by the Architect regarding the Project.

As-Built Drawings ("As-Built")

Drawings showing how the Project has been constructed.

Attorney

The City Attorney of the City of Portland, Oregon, or authorized representative.

Auditor

The City Auditor of the City of Portland, Oregon, or authorized representative.

Award

The decision of the City 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 upon which a Bidder bases its Bid to 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.

Bid Bond

The bond or other security required to be submitted with each Bid, which assures that the Bidder will enter into a Contract if its Bid is accepted.

Bidder

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

Bonds

Documents issued by third parties that provide financial protection to the Owner in the event that 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").

Bureau

A subdivision of the City of Portland. The Bureaus of the City of Portland include, but are not limited to, the following: Environmental Services, Maintenance, Parks and Recreation, Purchases, Office of Planning and Development Review (OPDR), Traffic Management, Transportation Engineering and Development, Water Works, and General Services.

Calendar Day

Calendar days, including weekdays, weekends and holidays, beginning at midnight and ending at midnight, twenty-four hours later, unless otherwise specified by a more specific provision of the Contract Documents.

Certificate of Completion

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

Certificate of Occupancy/Certificate of Final Inspection

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

Change Order

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.

City

The City of Portland, Oregon, synonymous with Owner.

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.

Code

The ordinances adopted by the City Council of Portland that are in effect as of the date of the Contract and as subsequently amended. The term "Code" includes all regulations adopted by Bureaus pursuant to authority given by the Code.

Construction Schedule

Schedule provided by Contractor to Owner, as required by the Contract, which shall not exceed the Contract Time, shall relate to the entire Project, and shall provide 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 - 'B', 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 of 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.

Council

The City Council of the City of Portland, Oregon.

Day

Calendar Day.

DCVR/DCRFI

Design Clarification and Verification Request ("DCVR") or Design Clarification Request For Information ("DCRFI") is a form approved for use by the Owner and used by Contractors to request information regarding the Project. It is equivalent to a Request for Information ("RFI").

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 possession of Owner or in use by Owner.

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. Engineers who may act as Owner's Representatives are the City Engineer, the Traffic Engineer, the Chief Engineer of the Bureau of Water Works and any other Engineer authorized by the Contract Documents 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 or 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 whose use in or on a particular Project is specified. The "Equal" substitute shall be the same or better for 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.

Field Order

A written order issued by the Owner's Representative that does not involve a change in the Contract Amount or Contract Time or the intent of the Contract.

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.

Foreign Contractor

A Contractor who is not domiciled in Oregon or registered by the Secretary of State of the State of Oregon to do business in the State of Oregon.

General Conditions of the Contract for Construction – 'B'

The terms, directions, provisions and requirements set forth in the City of Portland General Conditions of the Contract for Construction – 'B' in effect at the time of the Bid.

Hazardous Substances

Substances or materials defined as hazardous in Oregon law. Examples include hazardous wastes, as defined in ORS 466.005, any substance defined as a hazardous substance pursuant to section 101(14) of the federal comprehensive Environmental Response, Compensation and Liability Act, oil, and any substance designated as hazardous by the State Environmental Quality Commission.

Incidental Work

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

Inspector

An employee of Owner and representative of the Engineer or Owner's Representative authorized to inspect and report on some aspects of Contract performance. Inspectors must be distinguished from Regulatory Inspectors (defined below).

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 is successfully completed.

Landscape Architect

A person duly registered with the State Landscape Architect Board who performs professional services such as consultation, investigation, reconnaissance, research, design, preparation of drawings and Specifications and responsible supervision where the dominant purpose of the services is a) the preservation and enhancement of land uses and natural land features; b) the location and construction of aesthetically pleasing and functional approaches for structures, roadways and walkways or other improvements for natural drainage and erosion control; or c) the design for equestrian trails, plantings, landscape irrigation, landscape lighting and landscape grading.

Law

Any federal, state, "local" law, ordinance, Code, regulation or rule.

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.

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

Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses are those 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 jobsite.

Notice

A written communication delivered by hand or by mail to an individual, employee, agent, official, or officer of the Owner or Contractor authorized to receive notice, as set forth in the Contract Documents or as prescribed by law. Communications sent by facsimile transmission (“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 City of Portland.

Owner’s Representative

An employee acting on behalf of Owner who has authority to make decisions regarding the Work and the Contract, except to the extent that City Council approval is required by the City’s Charter, Code or any specific ordinance. In any particular Contract, the Owner’s Representative may be designated as the Engineer, Architect, Project Manager, Construction Manager or other individual.

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) that 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 City Bureaus or outside agencies having statutory or proprietary jurisdiction over portions of the Work.

Person

“Person” includes an individual, firm, partnership, joint venture, corporation, limited liability companies, joint stock companies and associations.

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 either be 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/or 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 proposal is a binding offer to enter into a Contract with the Owner and submitted in response to a Request for Proposals.

Provide

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

Purchasing Agent

The Director of the Bureau of Purchases or the Director's designated representative.

Purchasing Rules

Those rules adopted by the City of Portland that govern purchasing of goods, services and materials found in Chapter 5.33 of Code of the City of Portland.

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 which are 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 Bureau of Buildings 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 (e.g., electrical, plumbing, etc.).

Release

When used in regard to environmental regulations, the term "release" 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 upon which the Owner's Representative's response will be returned.

Request for Proposal or Proposal Request ("PR")

A Request for Proposal or Proposal Request after the Contract is awarded is a written communication by the Owner to the Contractor seeking information about the effects of a possible change to the Work.

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. When accepted by 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

As used herein, the words "shown," or "as shown," shall be understood to refer to work shown, indicated, or described on the Plans in the Contract which can be reasonably inferred as belonging to the item of Work described or indicated and which 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 City 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 is typically applicable to a specific Project that may modify the General Conditions of the Contract for Construction – ‘B’, impose additional requirements applicable to a specific project, or both.

Specifications

Contract documents that describe the Work and include any Reference Specifications incorporated therein.

Specified

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

Standard Plans and Drawings

Standard details of structures, devices, or instructions adopted by Owner in the General Conditions of the Contract for Construction - ‘B’ 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 occupancy or use of the Project for its intended purpose, and where the omissions and deviations from full performance are inadvertent and unintentional, do not impair the Work as a whole, can be easily remedied, and may be paid for by deductions from the Contract Amount.

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 2000 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, electricity, 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 shall mean the utility company, district, or cooperative, including any wholly owned or controlled subsidiary thereof, that provides utility services.

Work

All material, labor, tools, equipment, and all appliances, machinery, systems, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging 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 City of Portland 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, US Department of Transportation
NACE	National Association of Corrosion Engineers
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NFPA	National Fire Protection Association
NLMA	National Lumber Manufacturer's 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
UBC	Uniform Building Code
UFC	Uniform Fire Code
UMC	Uniform Mechanical Code
UL	Underwriters' Laboratories, Inc.
USASI	United States of America Standards Institute
USC	United States Code
WEF	Water Environment Foundation
WWPA	Western Wood Products Association

102 INSTRUCTIONS REGARDING BIDDING

The Award of this Contract is subject to the City's most recent version of its Purchasing Rules. Bidders are expected to be familiar with those rules. In addition to those rules, the following subsections of this Section govern bidding for contracts for which these Specifications are applicable.

102.01 EXAMINATION OF CONTRACT, SITE OF WORK AND SUBSURFACE DATA

- A. The Bidder shall carefully examine the sites (including material sites) of the proposed Work, the Bid, Plans, Special Provisions, Specifications, Addenda, and Contract forms. The submittal of a Bid shall be conclusive evidence that the Bidder has made such examinations and understands all the requirements for the performance of the completed Work.
- B. The Bidder shall determine the methods, materials, labor, and equipment required to perform the completed Work and shall reflect their cost in the Bid prices. Any costs exceeding those anticipated by the Bidder will not entitle it to additional compensation.
- C. If the Owner has made an investigation of the site specifically for the proposed Work, boring log data, soil sample test data, subsurface data, or any historical data accumulated by the Owner's Representative will be made available for inspection by the Bidders at the Owner's office or another location. The Owner is under no obligation to search its records for other data that may or may not be helpful for the Bidder's inspection, and the parties agree that no Claim for additional compensation may be made if such additional test data is not provided. It is mutually recognized and agreed to by all parties that:
 1. When any of this data is included in the Bid Documents, it is for the purpose of disclosing design information and is not a part of the Contract.
 2. The subsurface investigations made by the Owner are for the sole purpose of obtaining data necessary for planning and designing the Project.

3. The Owner assumes no responsibility whatsoever for the sufficiency or completeness of the data furnished with respect to meeting the needs of the Bidder in planning his work as it was obtained for an entirely different purpose.
4. The Owner warrants that the data represents with reasonable accuracy the conditions and materials found in the specific borings at the time the borings were made. The Owner does not warrant that the condition, materials, or proportions of materials at any other locations, or between the borings, is identical to what was found.
5. The Owner makes no representation or warranty expressed or implied that:
 - a) The Owner's interpretations from the data are correct.
 - b) Moisture conditions and indicated water tables will not vary substantially from those found at the time the borings were made.
 - c) The ground at the location of the boring has not been physically disturbed or altered after the boring was made.
6. The disclosure of subsurface information from the Owner's Representative is solely for the convenience of the Bidder and shall not relieve the Bidder or the Contractor of any risks or of any duty to make his own examinations and investigations as required by this Subsection or any other responsibility under the Contract.
7. The Bidder acknowledges that it has ascertained the nature and location of the Work, and that it has investigated and assured itself as to the general and local conditions that can affect the Work or its cost. The Bidder also acknowledges that it is satisfied as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered so far as this information can be reasonably ascertained from an inspection of the site, including exploratory work done by the Owner, as well as from the Bid Documents and any data that may be provided or made available. Failure of the Bidder to take these actions will not relieve it of responsibility for properly estimating the difficulty and cost of successfully completing the Work, or for proceeding to successfully complete the Work without additional cost to the Owner.
8. The Owner assumes no responsibility for conclusions or interpretations made by the Bidder based on the information that the Owner makes available. Statements made by City representatives at the pre-bid or pre-proposal conference or elsewhere are not binding on the City and shall not change the Solicitation Document unless the City confirms the statements and changes to all prospective Bidders or proposer by written addendum to the Solicitation Document.
9. In the event of a conflict between Codes, industry standards and Reference Specifications, the most stringent requirements apply and Bidders shall submit their Bids based on the most stringent requirements. See Paragraph 106.02E.

102.02 AMOUNT OF WORK TO BE DONE

- A. The Owner reserves the right to increase or decrease the amount of any class, item, or portion of the Work and to delete any bid items in their entirety after the Contract is Awarded. Those changes shall not be considered as a waiver of any condition of the Contract nor shall such changes invalidate any of the remaining provisions of the Contract Documents.
- B. The Contractor shall inform the Owner of any obvious (patent) conflicts in the Contract prior to Bid as required by Subsection 104.02.

102.03 ASSIGNMENT OF ANTI-TRUST RIGHTS

The Bidder shall sign a form provided in the Bid Documents assigning to the Owner any Claim for relief that the Contract has or may have in the future by reason of violation of 15 USC §§ 1-15 or ORS 646.725 or ORS 646.730.

102.04 COMPLIANCE WITH M/W/ESB PROGRAMS

The Bidder shall comply with all City programs contained elsewhere in the Bid Documents that concern M/W/ESBs, including those regarding the substitution of Contractors during performance of the Work.

102.05 NON-COLLUSION AFFIDAVIT

The Bidder shall sign an Affidavit of Non-Collusion contained elsewhere in the Bid Documents that affirms that the Bidder has arrived at the prices and amount of its Bid independently, that neither the prices nor the amount have been disclosed to any other firm or person, that no attempt has been made to induce any person to refrain from bidding for the Work described by the Bid Documents, that the Bid has been made in good faith and not pursuant to any agreement with any other firm or person to submit a complementary or other noncompetitive Bid and that the Bidder is not currently under investigation by any governmental agency and has not in the last four years been convicted or found liable for any act prohibited by State or Federal law involving conspiracy or collusion with respect to bidding on any public Contract, unless that conviction is disclosed so as to permit the Owner to determine whether the Bidder is a responsible Bidder under Oregon law. Failure to sign the Affidavit shall render the Bid nonresponsive and the Bidder ineligible for Contract Award.

102.06 AWARD OF CONTRACT

The City's Purchasing Rules shall govern the Bidding and Award of any Contract by the Owner. When the Contract contains Unit Price bid items, the estimated quantities and Unit Prices are used to determine the lowest responsive and responsible Bidder.

102.07 BIDDING BASED ON CONTRACT DOCUMENTS

A Bid shall be based on the requirements of the Contract Documents. The Contractor shall not submit a Bid anticipating that any portion of the Contract Documents will be changed, modified or not enforced. However, if the Contractor believes that any portion of the Contract Documents conflicts with, or is at variance with, any law, it shall immediately notify the Owner in writing of the Project so that the Owner can analyze the situation before Bids are submitted.

102.08 INSURANCE

A. General Provisions

1. The Contractor shall obtain the insurance coverage described in Paragraphs C, D and E below and maintain that coverage until the entire Project is complete and until it is accepted by the City. The Insurance carried by the Contractor shall be the primary coverage, and any insurance maintained by Owner is excess and solely for damages or losses for which the Owner is responsible. The coverages stated below are the minimum coverage acceptable, unless otherwise provided by the Contract Documents.
2. The Contract Amount includes the cost of any insurance required by the Contract Documents. The Contractor is not entitled to additional compensation because it misunderstood what insurance coverage was required. Any confusion regarding what coverage is required should be brought to the Owner's attention prior to submission of a Bid or Proposal.
3. The Owner may, but is not required to, obtain insurance it deems prudent under the circumstances if it discovers that the insurance required by the Contract Documents has not been obtained or, for whatever reason, is no longer in effect. If so, Owner may recover the cost of obtaining that insurance from the Contractor from any sums due, or will become due, the Contractor on this or any other Contract.

B. Review of Coverage Before Contract Execution

1. The Contractor shall provide the Bureau of Purchases with certificates of insurance and additional insured endorsements signed by the insurance carrier showing that the coverage required by the Contract Documents with Insurance Services Office (ISO) form numbers to identify the specific coverage that has

been obtained and the effective dates of the insurance policies. This shall be provided within 14 Calendar Days of the announcement of the intent to Award the Contract to the Contractor by the Owner. The certificates shall contain a provision that states substantially the following: "The insurance described in this certificate shall not be canceled or materially altered without giving the City Auditor 30 days written Notice in advance of that action." Failure to comply with the reporting provisions of this Contract shall not affect the coverages provided to the City of Portland, the Owner and their officers, employees and agents.

2. The City Attorney's Office will review the certificates for approval. The City Attorney's office may reject any proposed certificate if the insurance proposed to be provided is not the same as the coverage required by the Contract Documents, may reject the certificate if it is unclear, or require that the underlying policy be presented for review. If the City Attorney's office determines that the certificates are unclear, the Contractor shall provide revised certificates that clearly show the insurance required by the Contract Documents has been obtained. Review or approval of the City Attorney's office of any insurance certificate does not excuse the Contractor from providing the insurance required by the Contract Documents.
3. If the Contractor fails or refuses to provide the required insurance coverage or certificates in a form satisfactory to Owner within the time required, the Owner is entitled to take any and all of the following actions:
 - a) Reject the Contractor's Bid;
 - b) Award the Contract to someone other than the Contractor; and
 - c) Recover any costs suffered by the City as a result of taking the actions above from the Contractor or its Bid Bond.

C. Worker's Compensation and related Insurance

1. The Contractor shall provide, and require all Subcontractors to provide, Worker's Compensation coverage for all persons employed in performing services under the Contract, in accordance with ORS 656.001 to ORS 656.794, either as:
 - a) A carrier-insured employer; or
 - b) A self-insured employer as provided by ORS 656.407.
2. Proof of such coverage shall be filed with the City and maintained for the duration of the Contract. The coverage shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. The Certificate shall be a standard ISO form showing the coverage obtained.
 - a) The certificate(s) will identify all of the parties who are Additional Insureds or Loss Payees, will clearly specify that there shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew Insurance coverages without 30 days written notice from the Insurer(s) to Owner.
 - b) Contractor shall have the Insurer strike out the clause "endeavor to send notice of cancellation" where such or a similar clause appears in any certificate. Any deductible in excess of \$50,000 shall be disclosed to the Owner in writing prior to Issuance of a Notice to Proceed and is subject to Owner's approval.
 - c) The City Attorney's office shall approve whether or not the certificate or proof provided is adequate. Contractor shall provide additional proof or revised certificates complying with the Contract upon request.
3. The Contractor shall require proof of such Workers' Compensation Insurance by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

4. Where work under this Contract is subject to the Federal Longshoremens' and Harbor Workers' Act or the Federal Jones Act, or any other workers' compensation system, proof of such coverage shall be provided to the City for approval and maintained for the duration of the Contract.

D. Liability and Property Damage Insurance

1. The Contractor shall obtain and maintain during the life of this contract, Commercial General liability Insurance covering bodily injury and property damage insurance to protect the Contractor and the Owner from any and all claims for damage or bodily injury, including death, that may arise from the work, regardless of whether that work is performed by the Contractor or a Subcontractor at any tier. That insurance shall contain the following policy limits for each occurrence:

Bodily Injury:	\$500,000
For Property Damage:	\$500,000

2. The insurance shall include the following coverage: Premises/Operations, Contingent Liability/Independent Contractor; Completed Operations; Product Liability; Broad Form Property Damage; Fire Liability; Contractual Liability; and Explosion, Collapse and Underground Hazard Liability, and Personal Injury and Advertising Liability. The policy shall be endorsed to extend the completed operations for three years after Final Completion of the Work.
3. The insurance coverage obtained by the Contractor:
 - a) Shall not be affected by any insurance coverage otherwise existing;
 - b) Shall name the Owner, its officers, employees and agents as additional insureds; If for any reason Contractor cannot obtain such coverage from its insurer, it shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the City of Portland, its officers, employees and agents as Named Insured with not less than a \$500,000 limit per occurrence. This policy must be kept in effect for 24 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to its issuance of a Notice to proceed.
 - c) Shall not be terminated or canceled prior to the completion of the Contract without thirty (30) days written Notice to the City Auditor, with a copy of such Notice being sent to the Owner's Representative. For purposes of computing time, the first day of the thirty days written Notice shall begin on the day that the Notice is actually received by the City Auditor;
 - d) Shall protect each insured in the same manner as though a separate policy had been issued to each, notwithstanding the naming of any number of additional insureds. However, this requirement is not intended to increase the insurer's liability as set forth in the policy beyond the amount, or amounts, for which the insurer would have been liable if only one person or entity had been named as the insured; and
 - e) Shall permit partial occupancy or use of the Project by Owner in advance of Substantial Completion without cancellation or discontinuance of coverage. In that event, the Owner and Contractor shall agree upon the time when partial occupancy or use of the Project by the Owner shall occur. If the insurance coverage provided by the Contractor requires consent of the Insurer before such occupancy or use occurs, the insurance policy shall also state that such consent shall not be unreasonably withheld.

- E. Builder's Risk Coverage – If the Contract Amount exceeds \$750,000 the Contractor shall obtain Builder's Risk Insurance and provide the City with a certificate for approval showing that such coverage has been obtained.

- F. Contractor shall hold harmless, defend and indemnify the City and the City’s officers, agents and employees against any liability that may be imposed upon them by reason of the Contractor’s failure to provide any insurance or coverage required by the Contract Documents. The scope of the indemnification and defense shall be as provided by Subsection 107.06.
- G. The contractor shall obtain, at Contractor’s expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and hired vehicles. This coverage may be combined with the Commercial General Liability Insurance policy. The combined single limit per occurrence shall not be less than the coverage limits noted above.
- H. The Owner and Contractor waive all rights against each other, and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damage caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to the Contract, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary.
 - 1. The Contractor shall obtain similar waivers from its subcontractors, sub-subcontractors, agents and employees. Each of the waivers shall be in favor of the other parties listed in this Subsection and shall be in writing if that is required to be valid legally.
 - 2. The policies shall provide waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to any person or entity even through that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or another person or entity had an insurable interest in the property damaged.
- I. Nothing in this section requires the Contractor or its insurer to provide insurance to the Owner for claims arising out of the death or bodily injury to persons or damage to property caused, in whole or in part, by the negligence of the Owner.

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 Contractor, and establishes 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 must 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 - ‘B’ and Standard Plans that may be applicable to this Contract. Any reference to a Standard Plan or General Conditions of the Contract for Construction - ‘B’ in this Contract refers to the ones in effect at the time that the Contract was advertised. In case of any confusion, contact the Owner’s Representative for an explanation.

104.02 PRECEDENCE OF CONTRACT DOCUMENTS/CONFLICTS

- A. Obvious (patent) conflicts in the Contract Documents, or obvious omissions, are ones that should have been discovered before submission of a Bid to the Owner by a reasonable person in the Contractor’s position if all the Documents had been reviewed. In such a situation, the Contractor has a duty to inquire of the Owner before submitting its Bid about the correct interpretation of the Contract. This permits the Owner to clarify by Addendum what is intended by the Contract. That is particularly true for errors in figures, drawings or Specifications.
- B. If the Contractor fails to bring an obvious or patent conflict or error to the Owner’s attention before it submits a Bid, it has waived its right to additional compensation when the Owner resolves it.

- C. Anything shown on the Plans and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Plans, shall be of like effect as if shown or mentioned in both. This does not constitute a conflict, discrepancy or error between the two.
- D. In cases of apparent discrepancies or conflicts between the Plans and the Specifications, the Contractor shall first determine if the matter can be resolved pursuant to the rule stated in C above. If not, the apparent conflict shall be resolved by designating the portion of the Contract Documents that takes precedence over the others. Therefore, when preparing its Bid, or when beginning any portion of the Work, the Contractor shall use the following order of precedence to resolve any apparent conflict:
 - 1. Permits from Outside Agencies required by law
 - 2. Change Orders
 - 3. Addenda
 - 4. Technical Specifications
 - 5. Plans
 - 6. Information furnished by written notes and/or schedules on drawings
 - 7. Large Scale Drawings over small scale drawings
 - 8. Information provided by lines on drawings
 - 9. General Conditions of the Contract for Construction – ‘B’
- E. Contractor shall bring any real or perceived discrepancy concerning dimensions, quantities or location between the drawings, details or Specifications to the attention of the Owner’s Representative before beginning that portion of the Work.
- F. In the event of any inconsistency in the Drawings and Specifications unless otherwise ordered in writing by the Owner’s Representative, the Contractor shall provide the better quality of, or the greater quantity of Work or materials. This provision shall apply only to inconsistencies in express requirements of the Drawings and Specifications and not the interpretations by the Owner or Architect.

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 at 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. However, 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 shall 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 shall 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 shall provide six (6) 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 shall be responsible for all Submittals presented to the Owner for review, no matter what their point of origin may have been.
- F. The Contractor shall 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 shall 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 with such Submittals with the requirements of the Work and of the Contract. The Contractor shall 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 nor provide a basis for a Change Order. Nevertheless, the Owner's Representative shall 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. 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;
 - 5. The means and methods of construction; and
 - 6. Conforming to all the requirements of the Contract
- I. The Owner's Representative shall have fourteen (14) days to review any Submittals, unless a different time is established elsewhere. The Owner's Representative will review the Submittals and return 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 immediately can 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, upon 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 shown on the Submittal, or which is dependent upon 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 paragraph I (3) above. The Contractor may not begin work indicated by the Submittal, nor incorporate material or equipment, nor proceed with Work dependent upon 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. However, 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 shall apply to Submittals. Contract Time will not be extended if:
1. The Contractor's delay resulted from the City'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 properly was marked "Revise and Resubmit," "Rejected," "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 City's review of its Submittal and the City's action has the potential of increasing the Contractor's costs, the Contractor shall proceed as required by Section 109.17.
- L. The Contractor shall keep a current schedule of submittals available for the Owner's Representative to review.

104.04 EXTRA WORK AND CHANGES

- A. Owner and 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 shall not invalidate the Contract nor 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 shall be made pursuant to Subsection 109.03.
- B. Owner may at any time, by written order, require Contractor to perform extra or changed 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% of the total original Contract Amount.

- C. When so ordered in writing, by the Owner's Representative, Contractor shall proceed with the performance of any changed or Extra Work regardless of whether price or Contract Time have been agreed upon. If the Contractor refuses to perform the changed or Extra Work, this is a material breach of Contract and Owner shall have all remedies available to it at law and equity for that breach. Contractor shall have no right to additional Contract Time for delay incurred by Contractor's refusal to perform because either the price, time, or both, has not yet been agreed upon. Contractor's remedy is, instead, to proceed as required by Section 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 shall be issued to the Contractor, in writing, by the Owner's Representative.
 - 1. The Contractor shall submit a price quotation and Proposal for performing the changed or Extra Work within 10 days unless the Owner agrees upon a longer period of time in writing. The Contractor shall submit data to substantiate both the cost of performing the work and any additional Contract Time that may be requested.
 - 2. The Contractor's delay in submitting a price quotation and Proposal shall not, in and of itself, extend the Contract Time. If the Contractor is unable to prove that the extra or changed work will cost it additional money or is unable to substantiate that it will take additional Contract Time, 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 Owner and communicated to Contractor.

104.05 DIFFERING SITE CONDITIONS

- A. The Contractor shall promptly, and before the conditions are disturbed, give written Notice to the Owner's Representative of:
 - 1. Pre-existing subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or;
 - 2. Pre-existing unknown physical conditions at the site, of an unusual nature, which 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 investigate the conditions encountered by the Contractor promptly. If the 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 this 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, Owner and Contractor shall agree on the adjustment to be made. If they are unable to agree, the Representative will determine the amount of the Equitable Adjustment and adjust the time to perform if appropriate. If the Representative finds that differing site conditions do not exist, that decision is final and binding upon the Contractor.
- C. 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 this Contract.

105 CONTROL OF WORK

105.01 AUTHORITY OF THE OWNER'S REPRESENTATIVE

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

- A. The Owner's Representative's decisions 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 shall at all times carry out and fulfill the instructions and directions of the Owner's Representative in so far 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 shall have the authority to 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 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 shall 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 shall constitute 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 Owner under a separate Contract is not the Owner's Representative, unless the Contract Documents expressly state otherwise. Contractor will be notified if the Owner's Representative has been changed.

105.02 USE OF ARCHITECT OR ENGINEER AS OWNER'S REPRESENTATIVE

- A. The Owner may choose to have a consulting Architect or Engineer or Project Manager administer this Contract who is not a City employee and, if so, shall so notify the Contractor. When that occurs, the Architect or Engineer is the Owner's Representative for purposes of this Contract and has the 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 or Engineer's work and recommendations, including recommendations for payment, and may accept or reject the Architect's or Engineer's advice.
- B. Any drawings, Specifications and other documents prepared by the Architect 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 shall 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 shall be deemed 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 additional 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 shall bear the statutory copyright notice, if any, shown on the drawings, Specifications and other documents prepared by the Architect. 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 to perform the Work in accordance with the law, statutes, ordinances, or building Codes nor does it relieve the Contractor from obtaining 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. In the event that assigned personnel discover defective materials or work not being performed safely or in accordance with Contract requirements, the Owner's Representative shall have 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 shall be 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. In the event that assigned personnel or the Owner's Representative fail 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 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 Contractor requirements, it will notify the Contractor's Representative.

105.04 CONTRACTOR'S RESPONSIBILITY FOR WORK

- A. The Contractor shall 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 Owner, the Contractor is responsible for any damage it causes to either permanent or temporary work, utilities, materials, plants and equipment, all of which shall be repaired to the satisfaction of the Owner's Representative at the Contractor's expense. Damage caused by vandals shall be covered by Contractor's insurance. Damage to any portion of the Work that has been completed and accepted by the Owner and which is open for public use is not the responsibility of the Contractor if caused by third persons, such as vandals.
- C. The Contractor shall repair any damage for which it is financially responsible promptly. 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 Contractor shall 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. Contractor shall 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 shall follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in Oregon Administrative Rules. Copies of these rules may be obtained by contacting the Center. If there are questions about the rules, contact the Center. The parties agree that any Project Plans or Permit issued by Owner shall be deemed to have this language incorporated by reference.
- B. In addition to the notification required by paragraph 105.05(A) above, Contractor shall also give Notice to Owner of any intended excavation it may have at least 48 hours in advance of the proposed excavation.
- C. Contractor shall maintain any markings showing the presence of underground facilities. If Contractor does not maintain such markings, and Owner is required to re-establish them, Contractor shall pay 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 shall take the following actions:
 - 1. Obtain the Permits, if any, that are needed to allow closure to occur;
 - 2. Obtain advance approval from 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.
- B. Contractor shall defend, indemnify and hold the City harmless from any and all claims of damage, including attorney fees and costs, resulting from 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. Contractor shall protect the property of utilities, railways and fire control authorities that may be affected by Contractor's work as well as Utility lines, pipelines, and underground tanks.
- B. Owner will provide information it has to Contractor regarding the location of existing watercourses, drains, sewer lines and Utility lines for purposes of preparing its Bid. Owner does not always have or receive accurate information about the location of utilities. Therefore, such information must be considered to be approximate, and not guaranteed to be accurate. Contractor is responsible for determining the exact location of utilities and existing improvements when performing its work.
- C. Contractor shall obtain written permission from the Portland Bureau of Water Works before operating any water valve or hydrant. Unauthorized operation is prohibited. Contractor shall pay any fee associated with their operation.
- D. Contractor is required to maintain the flow of sewers, drains and water courses that might be interrupted by its work and restore that flow as directed by 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 must sometimes be done in close proximity to these conditions and that 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. Contractor shall 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, Contractor shall bear all costs for that temporary relocation. Contractor shall maintain utilities that are relocated by others in their relocated positions in order to avoid interference with structures that cross the Project Work.
- H. Contractor shall not hinder the work of Owner or the owner of a Utility in the event that they relocate any Utility.
- I. 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. Contractor shall protect, and take every reasonable precaution to avoid damage to, all public and private property that might be damaged by its operations. See Subsection 107.13, 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 shall either repair the damage, or have the damaged repaired by others at its own expense, without additional compensation from Owner. The repair shall bring the property damaged back to the same condition as it was before the damage occurred. If repair and restoration is not feasible, the Contractor shall 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 shall be repaired and restored by the Contractor or not. If Owner elects to have the property repaired with its own forces or by another entity, the Contractor shall pay the Owner all costs associated with that repair and restoration.
- C. Contractor shall give reasonable Notice to 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 which might be destroyed or damaged by the Contractor's operations.
- D. Contractor shall 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, 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. Contractor shall review the location, limits and methods to be used with the Owner's Representative prior to performing any clearing work.
- F. Contractor shall 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 shall be repaired at Contractor's expense. 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 of 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

Contractor shall 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 upon 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 shall protect work sites, 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.

105.14 NOISE

- A. The Contractor shall comply with all federal, state and local regulations regarding noise. Local regulations regarding noise currently are found in Title 18 of the City Code. Copies of Title 18 can be acquired by filing a written request with the Bureau of Transportation Engineering, Room 807, 1120 SW 5th Avenue, Portland, Oregon 97204-1971.
- B. The City 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 upon the nature, location and period of time for which the variance is sought. If the Contractor seeks a variance of a local regulation, it shall do so in the manner prescribed by the City Code.

105.15 ACCESS TO THE WORK

- A. Contractor shall provide access to the Work for representatives of the Owner, the State of Oregon, the Federal Government and other public entities having jurisdiction in the area.
- B. Contractor shall provide site access to Owner's Representative or assigned personnel all portions of the Work and to plants of manufacturers and suppliers at all times. Contractor shall provide them every opportunity to inspect the Work to ensure 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 and defective and shall 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 shall 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 with performing that work and with the costs of storing any salvable materials or equipment. If that occurs, the Owner also is entitled to deduct such costs from any sums otherwise due the Contractor.
 - a) If salvageable materials, equipment, or both are stored, the Owner shall notify the Contractor of the storage and give the Contractor 10 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 shall 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. Contractor still owes Owner for any difference in costs that may remain after the sale. However, if the proceeds exceed the Owner's cost it shall 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, the Owner's Representative is entitled to observe portions of the Work before they are covered or obscured upon request. If the Contractor covers or obscures a portion of the Work that is required or requested to be observed, it shall 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 shall comply with the Owner's request. If, upon 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 shall bear all costs associated with that activity and provide additional Contract Time, if that activity would cause the Contractor to incur liquidated damages. However, if, upon inspection by the Owner's Representation, the portion of the Work that is uncovered is found not to be in accordance with the Contract Documents, the Contractor shall correct the Work and bear any cost associated with that activity without a change in Contract Time.
- D. Replacement and correction of Defective Work prior to the time that the Work is completed and accepted is not limited by any warranty period otherwise established by the Contract.
- E. Owner retains the right to accept portions of the Work that do not conform to the requirements of the Contract Documents. However, such acceptance shall be in writing and given only by the Owner's Representative. Inspectors, employees and other agents of 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, 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. The Contractor shall comply with all Environmental Laws and all federal, state, and local laws regarding Hazardous Substances. In the event of a conflict between the Contract Documents and those laws, the laws shall prevail.
- B. In the event the Contractor, during the course of construction or during any other activities authorized under this Contract, should encounter Hazardous Substances or any other materials suspected of posing a threat to employees, the public, or the environment, the Contractor shall do the following:
 - 1. Immediately cease all work activities in and around any area of the Project where Hazardous Substances have been encountered or discovered, and take appropriate measures in compliance with all applicable Environmental Laws to stop or minimize the immediate spread or release of any Hazardous Substances.
 - 2. Remove the affected employees and secure access to the area.
 - 3. Immediately contact the Owner's Representative and deliver an oral assessment of the site conditions. Within 48 hours of the incident, the Contractor shall deliver to the Owner's Representative a written assessment of the occurrence, current site conditions and all actions taken.
 - 4. In order to prevent rain or storm water runoff from contacting the suspected Hazardous Substances, the Contractor shall immediately place appropriate control measures or devices on or adjacent to the affected area in such a manner that does not disturb the site or the suspected Hazardous Substance.
- C. Subcontracting of work does not relieve the Contractor of any of its obligations, including the Contractor's obligation to comply with all Environmental Laws as defined herein. The Contract Documents do not authorize the Contractor to remove, remediate, handle, transport, treat, or dispose of Hazardous Substances unless such activities are specifically required by the Contract.
- D. The Contractor shall at all times properly handle, store, use and dispose of any Hazardous Substances brought onto the work site in accordance with all applicable Environmental Laws as defined herein. In the event of a spill or release of any Hazardous Substances brought on to the work site by the Contractor, the Contractor shall follow the procedures set forth in Paragraph B above.
- E. Contractor shall comply with Oregon law and Oregon DEQ requirements regarding PCBs (polychlorinated biphenyls), radioactive waste, underground storage tanks, and actions to abate health hazards.
- F. Contractor shall comply with Oregon law, DEQ requirements and federal, state and local laws regarding air pollution, noise control, water pollution, oil spillage and used-oil disposal and asbestos abatement.
- G. Contractor shall prevent, control and abate pollution of federal, state, county and municipal waters as required by the Contract Plans and Specifications and local, state and federal regulations and requirements. No condition of this Contract releases the Contractor from any responsibilities or requirements under any environmental statutes, regulations or Permits. In the event of conflict between the Contract requirements and pollution control laws, rules or regulations, the more restrictive laws apply.
- H. Contractor shall comply with federal, state and local laws and regulations regarding Environmental Laws, including, but not limited to, those regarding employee health and safety and endangered and threatened species.

105.18 DOCUMENTS

The Contractor shall 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 shall be available to the Owner's Representative and shall be delivered to the Owner's Representative upon request and upon completion of the Work. The Drawings shall have recorded upon them all changes and corrections, 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 shall:

- 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, upon 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 shall 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 shall 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 shall 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. Contractor is obligated to 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, the OSHA, UBC, UFC, UMC, NEC, AASHTO, NSF and WEF. Without limiting the generality of other requirements of the Specifications, all work specified herein shall 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 shall govern. Any conflict between such standards and the Contract Documents shall 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 shall 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 are applicable:

1. "Products" refer 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" refer 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" refer 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 shall require no interpretation of test results by Owner's employees to determine whether the requirements of the Reference Specification have been met.
 6. "Conformance Documents" refer 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 include shop drawings, material lists, equipment lists, catalog description sheets and manufacturer's brochures.
- B. The Contractor must 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 shall bear the cost of providing Certifications and Conformance Documents, including the costs of any sampling and testing that must be performed in order to achieve certification. Materials, products, parts and pieces of equipment shall not be incorporated into the Work without acceptable certifications or conformance documents.
- D. Certification shall be provided by the manufacturer or testing agency verifying that Contract requirements have been met. The certification shall identify the testing agency, the representative responsible for the test results, and include a copy of the specified test results (for example, ASTM, AASHTO, UL, etc.).
- E. Conformance documents shall 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 shall 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 shall 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 shall be delivered to the Owner with the shipment of the material, part, product or material to which the certification corresponds, 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 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 shall cooperate with any sampling and testing that is required or requested. The Contractor shall provide samples without charge and provide them in time to permit testing before use.
- D. If a sample is to be tested prior to its incorporation into the Work the Contractor shall 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 shall 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 shall bear the costs of testing.
- F. If the sample previously was incorporated into the Work and testing shows the sample does not meet the requirements of the Contract Documents, the Contractor shall 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 shall 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 Owner. Stored items shall 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 shall be understood that the words "or approved Equal" follows 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 the event 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 shall 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. However, acceptance by the Owner's Representative shall 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 shall 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 affect on either the Contract Amount or Contract Time.
- E. If the Owner's Representative rejects the proposed substitution the Contractor shall proceed to follow the Contract Documents as originally drafted, without a change in the Contract Amount or Contract Time. Therefore, the Contractor shall not order materials, products, parts or equipment in anticipation of the substitution prior to the time that the offer of substitution is accepted.

106.08 PRE-CONSTRUCTION RECYCLING PLAN

- A. The Portland Office of Sustainable Development (OSD) requires a pre-construction recycling plan for all building projects where the total job is valued at \$50,000 or more. OSD will provide this form to Contractors performing such work. After receipt, the Contractor shall promptly submit such plan to OSD with a copy to the Owner's Representative.
- B. Recyclable materials include, but are not limited to, rubble (concrete/asphalt), land clearing debris, corrugated cardboard, metals and wood. The Contractor shall follow all of OSD's requirements in this regard.
- C. Failure to provide such a plan can lead to fines levied by OSD. If such fines are levied, the parties agree that Owner may withhold the amount of any fine levied against the Contractor and transmit that money to OSD.

107 LEGAL RELATIONS AND RESPONSIBILITIES

107.01 LAWS AND REGULATIONS

- A. The Contractor shall 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 (Americans with Disabilities Act) and Title 10 of the City Code regarding Erosion Control. The Contractor also shall comply with the orders, rulings, decrees and decisions of any administrative or judicial officials that in any manner whatsoever affects the Project, the Work, the safety of persons around the construction site, 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 shall notify the Owner in writing immediately.

107.02 SUBCONTRACTORS

- A. Contractors are responsible for performing the Work required by the Contract Documents. Use of Subcontractors is permitted, however, 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 shall provide in all of 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 must provide that they are assignable or otherwise transferable to the Owner at the Owner's option, in the event that this agreement is terminated for any reason. If the agreements, subcontracts and purchase orders are not assignable, the Contractor shall be liable for any additional costs incurred by 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 upon request of the Owner within three (3) business days of the request.
- E. Substitution of Subcontractors shall be in accordance with Oregon law. In addition, substitution of M/W/ESB Subcontractors 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 this Contract will provide a benefit to the citizens, ratepayers, or taxpayers of the City of Portland. Therefore, satisfactory completion of the Project by the Contractor is of paramount importance. The Contractor agrees that by accepting this 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 upon completion of the Contract in the manner and to the extent required by the Contract Documents. Therefore, any measurement, estimate or certificate 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 shall 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 verbal or written statement whatsoever, made by any employee or agent of the Owner, shall operate as a waiver or as an estoppel, or otherwise preclude the Owner from insisting upon its rights to performance of the Contract in accordance with the Contract Documents.

107.04 NO THIRD PARTY BENEFICIARY TO THIS CONTRACT

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

107.05 OTHER CONTRACTS

- A. Owner reserves the right to Award other Contracts, or issue Permits, for work that may require coordination with the Contractor's operations under this Contract.
- B. Contractor shall 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 promptly shall 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 upon the work of others, separate Contractors and their work has defects that hinders, prevents or otherwise makes unsuitable the successful completion of Contractor's Work.
- D. Failure to provide the Notice stated in (C) above constitutes 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. Contractor shall defend, hold harmless and indemnify Owner 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. 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 shall not endanger any work of any other Contractors by cutting, excavating or otherwise altering any work and shall not cut or alter the work of any other Contractor, except as directed by the Owner's Representative.

- G. Contractor agrees that if a dispute arises regarding clean-up costs, the Owner's Representative may apportion such costs to Contractor and other Contractors as the Representative determines is fair and equitable.
- H. Contractor shall 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 Owner or another Contractor in any way it shall seek the Owner's Representative's written approval. If the Owner seeks the Contractor's approval to alter, change, cut or otherwise modify its work, Owner will notify Contractor of that fact.

107.06 LIABILITY AND INDEMNIFICATION

- A. The Contractor shall indemnify, hold harmless, and defend Owner, its officers, employees and agents 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, 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. Owner shall notify Contractor of any claim of which it is aware that requires Contractor to defend, indemnify and hold Owner harmless. Thereafter, Contractor shall notify Owner in writing within 30 days that it will defend, indemnify and hold Owner harmless. Contractor's failure to provide such notification is a breach of contract. In the event that Contractor fails to give Notice within 30 days, Owner may defend the claim and charge Contractor with any costs associated with that effort.
- C. Owner reserves the right to participate in any claim irrespective of Contractor's obligations to indemnify, hold harmless, defend or notify. However, if Owner elects to participate in any claim after receiving notification from Contractor, Contractor is not obligated to indemnify Owner for the costs associated with that participation, although its other obligations to indemnify, hold harmless and defend remain intact.
- D. Nothing in this section requires the Contractor or its insurer to indemnify the Owner for any claims or losses arising out of death 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 shall acquire and pay for all patents, royalties and license fees required to perform the Work. Contractor shall defend, hold harmless and indemnify Owner for all claims brought against it regarding royalties, license fees and patents as provided in Subsection 107.06.

107.08 PERMITS

- A. The Contractor shall, without additional expense to the Owner, be 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 this paragraph, the Owner will:
 - Pay the fee charged by the Bureau of Development Services commonly known as the "plan check" and "building permit" fee.
 - Pay for any Portland Department of Transportation right-of-way fees, system development charges and water bureau fees for water meter and fire hydrant plan review and installation.
- 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. 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. Contractor shall 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. Contractor shall defend, hold harmless and indemnify Owner for all claims brought against the Owner if such claim 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 AGENCIES AFFECTING CITY CONTRACTS

The Oregon Legislature has determined that Bid Documents for a public contract for a public improvement shall make specific reference to federal, state and local agencies that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the Contract. The agencies include, but may not be limited to the following:

A. Federal Agencies:

1. Agriculture, Department of
 - a) Forest Service
 - b) Soil Conservation Service
2. Army, Department of the
 - c) Engineers, Corps of
3. Commerce, Department of
 - d) National Oceanic and Atmospheric Administration
 - e) National Marine Fisheries Service
4. Interior, Department of
 - f) Heritage, Conservation and Recreation Service
 - g) Indian Affairs, Bureau of
 - h) Land Management, Bureau of
 - i) Reclamation, Bureau of
 - j) Surface Mining, Reclamation and Enforcement, Office of
 - k) US Fish and Wildlife Service
5. Labor, Department of
 - l) Occupational Safety and Health Administration
 - m) Mine Safety and Health Administration
6. Transportation, Department of
 - n) Coast Guard
 - o) Federal Highway Administration

B. Oregon Tribal Governments

Warm Springs, Confederate Tribes of

C. State of Oregon Agencies

1. Agriculture, Department of Soil and Water Conservation Division
2. Energy, Department of
3. Environmental Quality, Department of
4. Fish and Wildlife, Department of
5. Forestry, Department of
6. Geology and Mineral Industries, Department of
7. Human Resources, Department of
8. Insurance and Finance, Department of
9. Oregon Occupational Safety and Health Division
10. Labor and Industries, Bureau of
11. Land Conservation and Development Department
12. State Lands, Division of
13. Water Resources Department

D. Local Agencies

1. City Council
2. County Courts
3. County Commissioners
4. Metro
5. Planning Commissions
6. Port Districts
7. Public and Private Utilities
 - a) County Service Districts
 - b) Fire Protection Districts
 - c) Irrigation Districts
 - d) Lighting Districts
 - e) Metropolitan Service Districts
 - f) Sanitary Districts
 - g) Water Districts
8. Tri-Met

107.10 LABOR

The Contractor shall 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

shall 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 shall be followed. Replacement of that person is at the Contractor's cost.

107.11 RESERVED FOR EXPANSION

107.12 PUBLIC SAFETY AND CONVENIENCE

- A. General Rule: The Contractor shall ensure the safety of the public during its performance of the Work and shall 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 (B) – (H) below.
- B. Access: The Contractor shall 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 also shall 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 shall 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 shall not obstruct or interfere with travel over any public street or sidewalk without approval of the Owner's Representative.
- C. Public Transit: The Contractor shall not interfere with the normal operation of the streetcar, Tri-Met or other public transit vehicles unless otherwise authorized.
- D. Work Site: The Contractor shall keep the Project site safe in compliance with applicable law. Safety includes, but is not limited to: 1) providing an approved type 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. In the event that the law requires greater safety obligations than that imposed by the Owner, the Contractor shall comply with the law.
- E. Emergency: Emergency vehicles, including but not limited to police, fire, and disaster units shall be provided access to the work site at all times.
- F. Cleanliness: The Contractor shall, 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 upon the road. The cost of performing such work shall be included in the Contractor's Bid and no additional payment will be made for performing this task.
- G. Parking: The Contractor shall 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.
- H. Accidents: The Contractor's Project Manager or superintendent shall be in charge of accident prevention. Contractor shall take all actions necessary to prevent damage, injury and loss to persons and property as a result of accidents.

107.13 RIGHTS-OF-WAY, EASEMENTS AND PREMISES

- A. The Contractor shall 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 to use other land from the owner(s) of adjacent private property. The Contractor's Bid shall include all costs related to its needs for additional space and property if such is needed by the Contractor's method of operation to perform the Work. In order to protect the City from any

claim by an owner of private property, the Contractor shall provide the Owner's Representative with written permission from the property owner prior to the use of the property.

- B. The Contractor shall obtain and bear the cost of Permits for special occupancy and use of specified work areas from all appropriate and necessary governmental agencies.

107.14 TWO YEAR MAINTENANCE AND WARRANTY

- A. The Contractor shall fully warrant all work for at least two (2) full years 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 shall make all necessary repairs and replacements to remedy any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of Substantial Completion by the City Council due to faulty or inadequate materials or workmanship. Such repairs and replacements shall 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 shall nonetheless provide any warranty service, repairs or replacements as described in Paragraph A and B above, for that portion of the Work that is not in dispute. In the event that a dispute delays Acceptance of the Work, the warranty for portions of the Work not in dispute shall run from the date of Substantial Completion of the remaining portions of the Work.
- D. The Contractor shall also repair any damage or remedy any disturbance to other publicly 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 also shall have a two (2) year warranty period from the date of its completion and acceptance by Owner.
- F. The Owner shall 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 if 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 shall be liable to the Owner for the cost of the work performed and any additional damage suffered by the Owner.
- G. The Contractor shall provide a bond during the two-year warranty period to guarantee the Contractor's performance of warranty work. The Contractor shall provide to the Owner a bond in the amount of 20% of the final Contract Amount in one of the following ways:
 - 1. Continuance of the Contract performance and Payment Bond;
 - 2. Any new performance and Payment Bond, acceptable to Owner, which covers the Contractor's warranty obligations imposed by the Contract Documents.
 - 3. Cash deposit to the City Treasury. Proof of the deposit shall be a receipt from the Treasurer.
 - 4. Other arrangements proposed by the Contractor that the Owner finds acceptable.

107.15 HAZARDOUS COMMUNICATIONS PROGRAM COMPLIANCE

- A. Contractor shall comply with OR-OSHA requirements regarding "hazardous communication."
- B. Contractor shall have available at the job site and make available to the Owner's Representative upon request copies of Material Safety Data Sheets (MSDS) for all hazardous chemicals to be used or stored by the Contractor at or around the job site. The Owner will submit to the Contractor MSDS for all hazardous chemicals being used or stored or around the job site by the City. This exchange of information will be

made at the preconstruction conference for all hazardous chemicals known at that time and must be continued for any additional hazardous chemicals to be delivered to the jobsite prior to their delivery.

- C. The Contractor shall not deliver, store, use or destroy any hazardous chemicals at or around the jobsite without prior submittal of MSDS for that chemical.
- D. The Contractor clearly shall identify the contents of all containers used for the Work at the jobsite. Each container clearly shall 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 shall be allowed if it is not in compliance with this Subsection.
- E. In the event that hazardous chemicals run through unlabeled pipes, Contractor shall 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.

107.16 PROTECTION OF CULTURAL RESOURCES

- A. The Contractor shall 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 shall 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 (hereafter "the affected area"). The Contractor shall 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 shall 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 storm water from contacting the cultural resources.
- C. Upon receipt of notification from the Contractor that cultural resources are suspected to exist or have been discovered, the Owner's Representative shall 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.

107.17 INDEPENDENT CONTRACTOR STATUS

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

107.18 TRESPASS

Contractor is responsible for trespass or encroachment upon 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 Owner to monitor progress of the Work. The Contractor shall provide an updated schedule as described in this Subsection.
- B. A preliminary Construction Schedule shall 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 Owner between the Owner and Contractor before work begins to discuss the Project.
- C. Within three (3) weeks of receipt of the Notice to Proceed or two (2) weeks after starting work, whichever is earlier, the Contractor shall submit for 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 schedule conflicts in some way with the Contract Documents, that fact will be brought to Contractor's attention. However, failure to catch errors or inconsistencies in the schedule by Owner's Representative shall 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, Contractor shall submit a schedule for each location at least two (2) weeks in advance of that activity, or at such other time as requested by the Owner's Representative.
- E. In the event that the Contractor's proposed Construction Schedule does not meet the requirements of the Contract, Contractor shall immediately resubmit a schedule that conforms to the Contract.
- F. Schedules must show the proposed sequence of work, 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. Owner will use the Contractor's 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. Contractor shall prepare and submit a revised 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 schedule at any time and, if so, Contractor shall provide one within seven (7) Calendar Days of the request.
- H. In the event a schedule or revised 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 schedules are provided. The suspension shall 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 schedules and revised schedules are submitted.

108.02 MEETINGS

- A. Project meetings shall include a pre-construction meeting, progress meetings, and specially called meetings as may be required during the progress of the Work.
- B. The Owner's Representative shall be responsible for recording the significant issues and resolutions for distribution to the Contractor and Owner.
- C. Pre-Construction Meeting
 - 1. The meeting shall be held on-site or at a time and place convenient for the Owner and Contractor. The meeting shall occur in advance of the issuance of the Notice to Proceed.
 - 2. The meeting shall be attended by the Owner's Representative, Contractor, Contractor's superintendent, major Subcontractors, park supervisor and major suppliers.
 - 3. The agenda shall consist of the following items, and may be supplemented at the suggestion of the Contractor:

- 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 shall provide the following information at the pre-construction meeting: the Project schedule, the Schedule of Values, a list of all Subcontractors to be used on the Project, and emergency telephone numbers.
- D. Progress meetings
- 1. Progress meetings are those meetings held during the progress of the Project. They shall be held at a time and location that is agreed upon during the pre-construction meeting.
 - 2. Progress meetings shall be held weekly during construction or more frequently as required.
 - 3. The Contractor's superintendent and the Owner's Representative shall attend the meetings.
 - 4. The agenda at the meeting shall 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.
- E. 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 shall attend. The meeting shall occur before the installation of products specified.
 - 2. The Owner's Representative shall provide written Notice in advance of the meeting date, make arrangements for the meeting and distribute copies of any decisions made within 3 days after the meeting.
 - 3. The meeting shall be attended by the Owner's Representative, any design consultants on behalf of Owner or Contractor, Contractor and any Subcontractors whose work is affected by the agenda.
 - 4. The agenda shall 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 the time when Contract Time will begin.

1. Work shall not begin until the Notice has been given.
 2. Before starting Work, the Contractor shall 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 shall 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 Owner with all documentation necessary for Contract performance, including, but not limited to, all necessary signatures on Contract Documents, a Performance and Payment Bond, proof of worker's compensation insurance and proof of liability insurance. After receipt of all required documentation Owner will review the submitted documentation for conformance with Contract requirements. If the documentation conforms to Contract requirements, Owner will issue the Notice to Proceed within 30 Calendar Days after receipt. If the documentation does not conform, Owner will notify Contractor as soon as possible so that proper documentation can be provided.
- 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 Owner or Contractor, or for Owner's convenience. If issuance of the Notice to Proceed is delayed for these reasons, Owner shall notify 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 shall 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. Contractor shall 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, Owner is entitled to impose liquidated damages in addition to any other remedies 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 Contractor shall 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 must encounter one or more excusable delays, and 2) the excusable delay must be shown to have actually affected the overall completion date of the Project, and 3) the Contractor must give 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. Examples of excusable delays include:

- a) Act of God, which means a singular, unexpected and irregular visitation of a force of nature such as fire or flood;
- b) Act of Public Enemy;
- c) Act of Vandalism;
- d) Strikes, labor disputes, or freight embargoes which, 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, 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 Contractor's failure or neglect; or
- f) Unusually severe weather. Unusually severe weather 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 work, which might reasonably have been anticipated from the previous ten years of historical records of the general locality of the work shall not be construed as abnormal or unanticipated. However, it is agreed 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 twenty-five percent or more; 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) shall be considered the official agency of record for weather information and the closest reporting station nearest the locality of the Work shall 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 D below.
- h) The Owner's direction to perform additional work.

2. Examples of delays that are not excusable include:

- i) Delays by Subcontractors or suppliers at any tier unless it can be shown that the delay was unforeseeable and not caused by any failure or neglect on the part of the Subcontractor or supplier.
- j) Delays that affect the Contractor's planned early completion, but do not affect the specified or adjusted Contract Time;

- k) 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.
 - l) Inadequacy or late delivery of materials and equipment;
 - m) Financial difficulties;
 - n) Lack of know-how or other inability to perform;
 - o) Labor problems other than the examples specified in 1(d) above;
 - p) Any requirement that the Contractor use equipment designated by the Owner for the Project (“sole source” equipment);
 - q) Time used by the Owner when such is permitted by the Contract. Examples include delays in reviewing Contractor requests for substitutions, Contractor requests for Proposals and in reviewing Contractor submittals.
- D. As noted in 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 Owner controlled access to or rights of occupancy of buildings and other properties which 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 Contractor for excusable delays that are not the fault of either the Contractor or Owner, such as those listed in paragraphs 108.05C(a) - (f). In that situation, the Contractor is only entitled to an adjustment of Contract Time.
- B. No additional compensation will be paid to 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 Paragraph C (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 only entitled to an adjustment of Contract Time for the length of the concurrent delay.
- C. Additional compensation shall be paid to Contractor if unreasonable delays caused by Owner as described in Paragraph 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 Contractor is entitled to additional compensation as stated above, Contractor is entitled to reimbursement during the period of time when overall Project completion was actually delayed. Such reimbursement shall include direct costs, if any, incurred as a result of the delay and a total of 10% added to these amounts for both overhead and profit. Work performed by a first tier Subcontractor shall include no more than a 10% mark-up for both overhead and profit, with an additional 5% mark up for 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% for both overhead and profit and the Contractor and any Contractors above that tier are entitled to a total of 3% 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 shall 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 Owner 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, Contractor shall be provided an adjustment of Contract Time corresponding to the period of the suspension and shall be reimbursed for its direct costs incurred as a result of the delay and 10% mark-up for both overhead and profit. However, if performance of work would have stopped as a practical matter for other reasons irrespective of Owner convenience, such as unusually adverse weather conditions or other excusable delays noted in 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 also shall 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. 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 shall 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 LIQUIDATED DAMAGES

- A. If the Contractor fails to complete the Work within the original or adjusted Contract Time, the parties agree that Owner will be damaged and that the amount of damage to Owner and to the public will be difficult to determine. Therefore, Contractor agrees to pay the amount of liquidated damages stated in the Supplementary Conditions in the Contract Documents. If no liquidated damages are specified, Contractor shall be liable to Owner for whatever damages Owner may actually establish. Liquidated damages will be measured not only by direct losses to the Owner as a result of delay, but intangible losses to the general public such as loss of use.
- B. Liquidated damages are assessed for each Calendar Day of delay, including holidays and weekends and shall run until the Project is substantially complete, regardless of whether the Contractor or a replacement Contractor achieves Substantial Completion.
- C. Liquidated damages are intended to compensate Owner and the public for Contractor's delay in completion of the Work. The Owner has the right to recover additional damages that are not based solely on delay in addition to liquidated damages, such as the excess costs of procurement or completion, the costs of restoring uncompleted work, and costs paid to replacement Contractors or Owner's own employees for completion of work.
- D. Permitting Contractor to finish the Work, or any part thereof, after the original or adjusted Contract Time has expired, is not a waiver of Owner's rights under the Contract Documents, including Owner's right to recover liquidated or additional damages.
- E. Owner may retain liquidated damages from any payment or Retainage due to Contractor. Payment or assessment of liquidated damages does not release the Contractor's obligation to fulfill the entire Contract.

108.09 SUPERVISION

- A. The Contractor or a representative authorized to act on the Contractor's behalf, shall supervise the progress and coordination of the work and be continually available in the event that the Owner needs to

communicate with the Contractor about the Work. Contractor shall have only one authorized representative and shall inform Owner if that representative should change.

- 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 shall follow any direction given by the Owner. Such directions will be confirmed in writing at the Contractor's request.

108.10 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 shall 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 shall be kept on or near the site of the Work at all times.
- B. The Contractor shall 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 shall verify measurements provided by the Plans and Specifications at the Project site to determine if 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 shall perform the Work in accordance with the additional details or instructions.
- E. At the completion of all the work, Contractor shall submit a complete set of Plans showing all "As-Built" conditions on the Project.

108.11 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. In the event that 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 shall deduct the cost of that action from any payment then or thereafter due the Contractor. In the event that the cost of the Owner's action exceeds any sums held by Owner and otherwise payable to Contractor, Contractor agrees to reimburse 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, 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 shall be deducted from the Contract Amount to be paid to the Contractor. Any objections to the change in Contract Amount shall be processed as a Claim as required by Subsection 109.17.

108.12 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 insure 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 a 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 shall notify the Contractor and all of its sureties of its intention of terminating the Contractor's right to proceed with the Work in writing 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 Owner by the Contractor and its sureties. For purposes of computing time in this subsection, the first day counted shall be the day that the Notice is mailed or sent 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, plant 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 shall be 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 Owner or to the Owner's designee, which may be another Contractor. Contractor shall execute such assignments within four Calendar Days of their receipt.
- E. Upon termination, Owner will make no further payments to Contractor. Contractor shall 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 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.

108.13 TERMINATION FOR CONVENIENCE

- A. The Owner may terminate performance of work under this Contract in whole, or in part, if the Owner determines that a termination is in the Owner's interest.
- B. The Owner shall notify the Contractor and its sureties in writing when it decides to terminate a Contract for convenience 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 shall be performed, shall be stated in the Notice. Notice shall be deemed to have been given if sent to the Contractor's or any Surety's last known address provided to Owner by the Contractor and its sureties. For purposes of computing time in this subsection, the first day counted shall be the day that the Notice is mailed or sent by the Owner.
- C. After Receipt of a Notice of Termination, and except as directed by Owner, the Contractor shall immediately proceed with the following obligations:
1. Stop work by the date as specified in the Notice;

2. Award no further subcontracts nor place 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 shall 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; provided, however, 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 shall 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 D(1)(a) above and if the Owner does not have the contracts assigned for the purpose of settlement;
 - c) A sum as profit on subdivision (a) above, not to exceed 10% of that amount, unless it appears that the Contractor would have sustained a loss on the entire Contract had it been completed. However, no profit is permitted on costs compensated under paragraph 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 other costs other than those allowed in Paragraph D shall 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 which 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 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 shall supply additional supporting documentation upon request by the Owner in order to recover its costs.
- H. The Contractor shall 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 shall be made available to the Owner within 30 days of the request.

108.14 SUBCONTRACTOR TERMINATION CLAIMS

- A. This Subsection establishes the procedure and provides additional details regarding costs allowed by Subsection 108.13 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 Owner for the purpose of settling or paying termination settlements to those Subcontractors as provided in Paragraph 108.13C.
- B. The Contractor shall reach a binding agreement with the Subcontractor before the Contractor can recover from the amount of the Subcontractor's Claim from the Owner. That agreement shall be reached before the Contractor presents its Claim to the Owner. Contingent agreements with Subcontractors are prohibited.
- C. The Owner is only liable 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 Paragraph 108.13E.

109 PAYMENT

109.01 RESERVED FOR EXPANSION

109.02 COMPENSATION

- A. The Contractor shall 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 are included within the Contract Amount.

109.03 RESERVED FOR EXPANSION

109.04 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 shall be determined by the mutual agreement of the Contractor and Owner through the COR process. Thereafter, the Owner and Contractor shall 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 shall be executed. If disagreement between the Owner and Contractor remains, the Contractor shall 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 Section 109.16 below.
- B. Compensation is not adjusted if the Contractor receives a Field Order or Architect's Supplemental Instruction, because neither of those are intended to affect the Contract Amount.

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 Directive will be issued when changes to the Work are necessary, but the Owner and Contractor are unable to reach agreement regarding the effect of the changes on the Contract Amount or Contract Time, or both.
- C. Upon receipt of a Construction Change Directive, the Contractor shall 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 to 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, require additional compensation or require additional Contract Time, is contrary to the requirements of the Contract Documents or that the Field Order requires the performance of Extra Work the Contractor shall follow the requirements of Subsection 109.17 regarding Claims for additional compensation and requests for additional Contract Time.

109.07 ARCHITECT'S SUPPLEMENT 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 it may 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, require additional compensation or require additional Contract Time, is contrary to the requirements of the Contract Documents or that it requires the performance of Extra Work the Contractor shall 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 shall submit a Design Clarification/Verification Request (DCVR) or a Request for Information (RFI) to the Owner's Representative. The purpose of either the DCVR or the RFI is to obtain information, clarify contract requirements or to verify information or contract requirements previously received.
- B. The response to the DCVR or RFI will come from the Owner's Representative or Owner's Architect or Engineer, depending upon the contract. That response may take the form of a Proposal Request (PR), The PR is not a change order nor 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. Upon receipt of a PR, the Contractor shall 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 shall reflect all costs, including, but not limited to, direct, indirect, impact costs, profit, and overhead that the Owner will be required to pay or all costs the Owner will save, if the proposed change is authorized. In addition, the COR shall include all documentation necessary to support the Contractor's conclusion regarding the amount of costs that will be incurred or saved. In addition, if the COR proposes that the amount of Contract Time should be increased it shall 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 Owner have agreed upon 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 total amount of 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 or work to be performed is through the execution of a written Change Order.
- B. Change orders shall 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 Contractor to execute a Change Order that reflects the terms of the COR, including any changes to the Contract Amount or Contract Time. See 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 shall issue a Construction Change Directive and the work will be performed by the Contractor a Change Order shall be executed at a later date.
- F. If the Contractor performs Extra Work and additional compensation is due, but the Contractor and 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 Owner to pay 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. However, if 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 shall notify the Owner's Representative in writing before beginning any work for which additional compensation is sought. The written Notice shall 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 provision(s) that support the Claim.

- C. When an event occurs that the Contractor believes entitles it to more time to complete the Work than Contract Time permits, the Contractor shall notify the Owner's Representative in writing when the event occurs. The written Notice shall 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 provision(s) 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 shall negotiate a Change Order setting for their agreement. If the Owner disagrees, the Contractor shall do the following:
1. Continue promptly with the work, including any extra or additional work required by the Owner so the Project is not delayed;
 2. Keep complete records of all costs incurred for which reimbursement is sought. The Owner also may elect to keep such records to eliminate later confusion. The keeping of such records by either Contractor or 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 F and G below.
- F. The Contractor's request for additional compensation shall 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 shall include the cost records required by paragraph 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 shall 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 shall notify the Owner's Representative of this fact in writing and provide an estimate of that cost. Thereafter the Contractor shall 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 when 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 shall 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 shall 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 shall 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 sufficient period of time to review it in light of work responsibilities, the Owner's Representative and the Contractor's Project Manager, shall meet to attempt to resolve the matter if either requests it. If Owner determines that the Contractor has not provided the documentation required by Paragraph G above, it may still meet with Contractor to discuss that and other matters.
1. If the Claim cannot be resolved, it shall be referred to persons with higher authority on the part of the Contractor and the Owner, who also shall have the authority to resolve the dispute. Those persons shall 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 Owner agree that the matter will be submitted to mediation. The mediator shall be chosen by mutual agreement. If a mediator cannot be agreed upon the Contractor and Owner agree to present the Claim to a mediator selected by the Presiding Judge of Multnomah County, Oregon. The mediation fee shall be borne equally by the Owner and Contractor.
 3. If the matter is not resolved by mediation, the Owner and Contractor may mutually agree to resolve the dispute by arbitration. The Owner and Contractor may mutually agree to any arbitration method. In the event that no agreement is reached as to the method of arbitration, the arbitration shall be as set forth in accordance with the Large, Complex Construction Cases procedures of the American Arbitration Association's panels of arbitrators for Large, Complex Construction Cases. The Contractor shall pay the arbitration fee required to initiate the arbitration.
 - a) The Contractor and Owner shall agree upon the appointment of an arbitrator. In the event of disagreement, each party shall appoint one arbitrator within 30 Calendar Days of the disagreement. Those two arbitrators will appoint a third arbitrator to act as the presiding arbitrator.
 - b) The decision of the arbitration panel shall be final, binding and conclusive upon the parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject to appeal and may be confirmed or embodied in an order or judgment of any court having jurisdiction. The arbitrators appointed pursuant to this Agreement shall not have the power to award punitive damages or attorney fees and shall not have the power to rescind this agreement.
 4. If the matter is not arbitrated and the dispute remains unresolved, either party may pursue resolution through litigation in accordance with the requirements of these Specifications.
 5. The procedures specified in this subsection shall be the sole and exclusive procedures for the resolution for disputes between the Owner and Contractor arising out of or relating to this agreement, 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 shall 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 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 or request for time.
- J. If the Contractor is entitled to additional compensation it shall receive 10% 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 shall pay 10% for both profit and overhead to the costs incurred by the Subcontractor and an additional 5% for both overhead and profit to the Contractor.

109.18 RECORDS

- A. The Contractor and its Subcontractors shall maintain all fiscal records relating to public Contracts in accordance with generally accepted accounting principles. In addition, Contractors and Subcontractors shall 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 shall make all records pertaining to their performance, any Claims or requests under a public Contract accessible to the Owner at reasonable times and places, regardless 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 a 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, shall 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 shall be entitled to inspect, examine, copy and audit the books and records of the Contractor and its Subcontractors and suppliers as provided in (A) above. Such books and records shall 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. Contractor shall 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. 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. The partial occupancy or use may commence before that portion is substantially complete. Before partial occupancy, the Owner's Representative and Contractor shall discuss payments, Retainage, if any, security, maintenance, utilities, damage to the Work and insurance, the period of time for correction and completion of the portion of the Work occupied and the commencement date of any applicable warranties and reduce matters of agreement to writing. Disputes about these matters shall be handled as provided by Subsection 109.17.
- C. Before partial occupancy or use, the Owner's Representative, and Contractor shall 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 shall 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 Contractor may inspect the portion separately if the other refuses to join in an inspection in a timely fashion.
- D. Partial occupancy or use of a portion or portions of the Work shall not constitute Owner's Acceptance of 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. Owner also is entitled to occupy or use all or a portion of the work upon Substantial Completion. Occupancy or use upon Substantial Completion does not constitute Owner's Acceptance of 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.
- F. When the work is substantially complete, regardless of whether Owner takes possession of or occupies all or a portion of the Work, the Contractor and Owner shall 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, 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, or charge the Contractor \$100 per day in liquidated damages until the Contractor completes the punch list items in accordance with the Contract Documents. Costs of performing the punch list work by Owner shall be deducted from any payments otherwise due the Contractor.
 - 2. Contractor shall notify Owner when the punch list work is complete and Final Payment shall be made in accordance with Subsection 109.07 After receipt of that Notice, Owner will inspect the work to determine if the punch list is complete as provided in Subsection 109.08.
 - 3. If the work is not complete despite the Contractor's Notice that the punch list items are complete, and Owner has hired an Architect or Engineer to assist it on the Project, Contractor shall pay costs for the Architect or Engineer's services if more than two inspections of the Work is required because the punch list remains incomplete.
 - 4. Upon Substantial Completion, the Owner shall be responsible for utilities, insurance, security, maintenance and damage to work caused by Owner's agents and employees unless otherwise provided in the Certificate of Substantial Completion. Contractor remains responsible for damage to work caused by its Subcontractors, agents and employees during the performance of punch list work
- G. Warranties for products and services provided by the Contractor shall commence upon 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 shall pay the Contractor the Contract Amount for the Work. See 105.01 regarding the Owner's Representative's authority.
 - 1. The Contractor shall 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 Representative may require. This Schedule, unless objected to by the Owner's Representative, shall 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 shall be full compensation for all work on the Project of whatever nature, including all Incidental Work, such as, 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 are 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 shall comply with ORS 279C.845 and submit certified payroll forms as required by the Oregon Bureau of Labor and Industries and shall ensure all Subcontractors do the same.
1. Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by law. The Owner shall pay to the Contractor the amount retained under this section within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements. The Owner is not required to verify the truth of the contents of certified statements filed by the Contractor under this section.
 2. Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by law. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection. Neither the Owner nor the Contractor is required to verify the truth of the contents of certified statements filed by a first-tier Subcontractor under this section.
- E. The Owner will pay the Contractor two times per month on this Project as set forth below. Because Owner wants to ensure that Subcontractors are paid amounts owed in a timely fashion, Contractor is required to make payments to its Subcontractors twice per month as well. Contractor has no discretion to only accept one payment per month to avoid this obligation.
- F. Within seven Calendar Days from the date that any payment is sent by Owner to Contractor, Contractor shall pay its Subcontractors for work performed during the period covered by the Application for Payment regardless if the 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 shall pay the portion not in dispute and timely resolve the amount that is in dispute.
- G. To receive payment twice per month, Contractor must 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 shall 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 to the extent it is consistent with the Approved Schedule of Values.
1. The Application for Payment and supporting documentation shall be submitted twice each month.
 2. The Application may include costs incurred as a result of complying with Change directives, but since the price for the changed work has not been agreed upon, 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. Where the Application is filled out incorrectly, or where there is any defect or impropriety in any submitted Application or when there is a good faith dispute, the Owner's Representative shall so notify the Contractor within 15 days stating the reason or reasons the Application is defective or improper or the reasons for the dispute. A defective or improper Application, if corrected by the Contractor within seven days of being notified by the Owner, shall not cause a payment to be made

later than 30 days after receipt of the original Application from the Contractor or 15 days after the payment is approved by the Owner's Representative, whichever is the earlier date.

4. The Application shall not request payment for work that the Contractor contends it does not owe to a Subcontractor or supplier.
- H. The Owner's Representative has discretion, but is not required, to approve payments to the Contractor of up to 100% 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 upon in writing, if the following conditions are met:
1. The value of the materials or equipment shall be greater than \$5,000.
 2. The Contractor submits bills of sale or other documentation satisfactory to Owner establishing the Contractor's proof of payment and title to the materials or equipment and 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 upon 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 shall payment for such materials require the Owner to pay for replacement materials if the original materials or equipment for which payment was made are damaged or destroyed prior to their 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, proof that the materials or equipment conform to Contract requirements has been provided to Owner, 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.
- I. 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 such withholding is necessary to protect the Owner's interests. Such withholding may continue until the claim is resolved.
- J. The Owner may retain and hold back up to 5% 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 shall 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 279.435. Interest on such Bonds or securities shall 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 Owner's Representative's opinion, the Work is progressing satisfactorily. Elimination or reduction of Retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of the Contractor's Surety.
 2. When the Work is 97 ½ % completed the Owner may, at its discretion and without application by the Contractor, reduce the Retainage to 100% of the value of the Contract work remaining to be done.
- K. Progress payments on Local Improvement District (LID) Contracts shall be made in accordance with the state law, the Contract Documents and City Code Chapter 17.16.

- L. 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 remains 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. Failure to submit a Construction Schedule or updated schedule required by the Contract; and
 8. The Contractor was exceeding the limits of Work Specified in Paragraph 204.3.14A or other work limits specified by the Contract; or
 9. The Contractor owes liquidated damages to the Owner.
- M. The Contractor is not entitled to interest on money purposely withheld for any of the reasons specified in (L) above.
- N. Progress payments reflect the Owner's Representative's best judgment about payment at the time payment is made. Such payments, however, do not constitute acceptance of the Work.
- O. The Contractor shall provide the Auditor'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.
- P. 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 Contractor makes payment;
 2. Impose liquidated damages in the amount of \$250 per day for each day that the payment is delayed by acts or omissions of the Contractor. Owner is paying Contractor to administer this Contract, to supervise the Work and to ensure that the Work is not hindered by poor relationships between Contractor and its Subcontractors. Owner has found that a failure to promptly pay Subcontractors causes complaints to be registered with Owner, and requires Owner to devote unnecessary time, resources and personnel to such matters. The parties mutually agree that it would be difficult, if not impossible, for Owner to determine the amount of damage caused to it by such actions, and that the amount of liquidated damages note above is a reasonable amount and not a penalty;
 3. Find the Contractor is a not a "responsible bidder" as that term is used in Oregon law;
 4. Pay the Subcontractor who has not received proper payment directly; and
 5. Terminate the Contract for Default as provided in Subsection 108.12.

109.21 COMPLETION AND FINAL PAYMENT

- A. The Contractor shall notify the Owner's Representative in writing when it considers that all the work required by the Contract Documents is complete. The Notice must be more than an invoice that requests the balance of the Contract Amount. Instead, the Notice shall 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 shall 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 Owner's attention. If the Work is preliminarily accepted as complete, the Owner shall 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 shall 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, and charge the Contractor liquidated damages in the sum of \$100 per day. Costs of performing the punch list work shall be deducted from any payments otherwise due the Contractor.
 2. If Owner has hired an Architect or Engineer to assist it on the Project, Contractor shall 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 shall 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 shall follow the requirements of Subsection 109.17. After performing the work that the Owner believes is required by the Contract the Contractor shall 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 shall send it to the Contractor for the Contractor's signature. After return of the Certificate, the Owner's Representative shall submit it, together with the estimate of the Final Payment due to the Contractor for ultimate acceptance of the Project. After acceptance, the Contractor shall 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. In the event that 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. Corrections of overpayments or underpayments between the Contractor and any Subcontractor or supplier is the sole responsibility of the Contractor.
- F. The Final Payment shall 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 work under the Contract is designated as one for a Local Improvement District Project (LID) Retainage will not be released until the conclusion of the assessment hearings provided in Section 17.12.050 of the City Code and the passage of the assessing ordinance provided in Section 17.12.060.
 3. 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 Owner shall be paid to Surety and not to Contractor.
 4. The Owner may deduct against the Final Payment, as provided in 109.20D, additional retainage in the amount of 25 percent of amounts earned which shall 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 the Contractor provides the Notice referenced in Paragraph A above, prepares and submits the Form referenced in Paragraph H below, the Owner's Representative presents a report recommending acceptance to the City and that report is approved. 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 shall sign an Acknowledgement Form:
1. Acknowledging payment of sums previously paid to the Contractor except for Final Payment; and
 2. Releasing all monetary Claims against the Owner other than the receipt of Final Payment. However, if the Contractor has submitted a Claim to the Owner pursuant to Subsection 109.17, 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. However, all Claims not specifically referenced on the form will be deemed to have been waived; and
 3. Certifying that:
 - a) All amounts due for labor, materials and other obligations due to the Contractor's own workers, its Subcontractors and suppliers have been fully paid in accordance with Oregon law, Chapter 279, except for amounts that might be due upon 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 that such claims are payable by its performance and Payment Bond, 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 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, shall 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 City of Portland sends a check or warrant to the Contractor that contains the Final Payment. The subsequent payment of minor amounts to the Contractor that constitute less than 2% of the total Contract Amount, or the payment of Claims made pursuant to Subsection 109.17, shall not affect the date when Final Payment is considered to have been made.
- C. The Contractor agrees that any legal proceeding initiated by the Contractor shall be brought only in the Circuit Court of Multnomah County, Oregon.
- D. The Contractor agrees that, as a result of its willingness to do business with the City of Portland, it will resolve any dispute with the Owner in Multnomah County, Oregon. All discovery between the parties undertaken pursuant to federal, state, or local rules shall be conducted within that county, including, but not limited to, the production of documents and the appearance of expert and lay witnesses for deposition, if such depositions permitted by court rules.
- E. In the event of a dispute, the Contractor and the City agree to bear the cost of producing their own employees for deposition in Multnomah County, 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' reasonable costs of travel, reasonable preparation costs and costs for time while in transit.

- F. 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 City Attorney's Office of the City of Portland.

[END]