

ITEM 104 SCOPE OF WORK/CHANGES**104.01 Intent of Contract****104.02 Modifications of the Contract Documents****104.03 Contractor Notification, Continuation of Work, and Claims****104.04 Maintenance of Traffic and Accessibility to Utilities****104.05 Rights In and Use of Materials Found on the Work Site****104.06 Right of Property in Materials****104.07 Final Cleaning Up****104.08 Recordkeeping/Audit**

104.01 Intent of Contract. The intent of the Contract is to provide for the construction, execution and completion of every detail and element of the Work in accordance with the Contract Documents. The Contractor shall perform all items of work covered and stipulated in the Proposal, perform altered and extra work, and furnish all labor, materials, equipment, tools, transportation and supplies required to complete the Work in accordance with the Contract Documents. Should any dispute or misunderstanding arise as to the intent or meaning of any of the Contract Documents, or any discrepancy therein, the decision of the Engineer shall be final and conclusive as to the requirements for performance of the Work; provided, however, if the Contractor disagrees with such decision, it may dispute the decision in accordance with 104.03.

The price for items of work or materials shown or provided for in the Contract Documents for which no separate line item unit price is given shall be distributed among the various Bid items. Submission of a Proposal shall be considered evidence and acknowledgement that the Bidder is satisfied with the Contract Documents and the conditions as shown therein. No additional compensation shall be paid or time given to the Contractor for compliance with the Contract Documents, except as and to the extent expressly provided in the Contract Documents.

104.02 Modifications of the Contract Documents.

A. General. The City may at any time, without invalidating the Contract and without notice to or release of the sureties, by written Change Order or Contract Modification, as applicable, make any change or modification in the Work or add to the Work within the general scope of the Contract, including, but not limited to, changes in the Contract Documents; in the sequence of the Work; or in the City-furnished facilities, equipment, materials, services, or site. The Contractor shall ensure that the amount of the surety bonds is modified as necessary from time to time to be consistent with any changed Contract scope, Sum or Time in accordance with any Change Order(s) or Contract Modification(s).

The Contractor shall have no right to compensation above the original Contract Sum until the extra work is included in a written Contract Modification approved by the City Council.

B. Differing Site Conditions. If subsurface or latent physical conditions are encountered at the Project site that (i) differ materially from those indicated in the Contract Documents or (ii) if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents are encountered at the Project site, the Contractor shall notify the Engineer, in accordance with the process and

timeline set forth in 104.03, before the conditions are disturbed or the affected Work is performed.

Upon notification, the Engineer will investigate the conditions to determine whether (i) the conditions meet the requirements of a differing site condition as defined herein, and (ii) cause an increase or decrease in the cost and/or time required for the performance of any Work under the Contract.

If the Engineer determines that there is a differing site condition as defined herein, the Engineer will notify the Contractor in writing and the City will adjust the Contract as specified in 108.06 and 109.05.

If the Contractor disagrees with the Engineer's determination, the Contractor must provide notice and bring a Claim in accordance with the process and timeline set forth in 104.03.

C. Written Delay or Suspension of Work. The Engineer may direct the Contractor, in writing, to delay its start of operations or to suspend its operations for the length of time that the Engineer deems necessary.

If the performance of all or any portion of the Work is delayed or suspended by the Engineer, in writing, for an unreasonable period of time (i.e. a period of time not originally anticipated, customary, or inherent to the construction industry or the Work involved) and the Contractor believes that additional compensation or time is due as a result of such delay or suspension, the Contractor must provide notice and bring a Claim in accordance with the process and timeline set forth in 104.03.

The Engineer will evaluate the Contractor's request in accordance with 104.03. If the Engineer agrees that the cost and/or time required for the performance of the Work has increased as a result of an unreasonable delay or suspension and such delay or suspension was caused by conditions beyond the control of and not the fault of the Contractor, its subcontractors at any tier, or its suppliers, the Engineer will notify the Contractor in writing and the City will adjust the Contract as specified in 108.06 and 109.05; provided, however, the City will not make an adjustment under this Section in the event that the Contractor's performance is delayed or suspended by any other cause or for which a Contract adjustment is provided or excluded under any other term or condition of the Contract.

If the Contractor disagrees with the Engineer's determination, the Contractor must provide notice and bring a Claim in accordance with the process and timeline set forth in 104.03.

D. Significant Changes in Character of the Work. The City may alter the Work as necessary or desirable to complete the Project.

The Engineer will make appropriate adjustments to the Contract in accordance with 108.06, 109.04, and 109.05, if such alterations constitute a significant change in the character of the Work. A "significant change" as used in this Section is defined as:

1. When the character of the Work as altered differs materially in kind or nature from that involved or included in the original Contract, or
2. Where the quantity of a Unit Price pay item in the Contract is an estimated quantity and when the actual quantity of such pay item varies more than

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twenty-five percent above or below the estimated quantity stated in the Contract. An adjustment in the Contract Price for such a pay item may be made in accordance with 109.04 upon demand of either party.

If a quantity variation in excess of 125% of the estimated quantity also causes an increase in the Contract Time(s), the Contractor shall demonstrate the time impact, if any, by an analysis in accordance with 108.03 and in accordance with the requirements of 108.06. If the Engineer concludes that the Contract Time(s) should be adjusted as a result of such quantity overrun, the City will issue a Change Order to adjust the Contract Time(s) as the Engineer determines.

The Contractor shall give the Engineer prompt written notice when it is aware, or has reason to believe, that quantities will overrun or underrun by 25% or more of the estimated quantity so that the City will have the opportunity to mitigate the effect, if any, on the scope, cost or time of the Project. This notice obligation shall be in addition any notice of claim for additional compensation or time pursuant to 104.03.

If the Contractor believes that an alteration constitutes a significant change as defined by this Section, the Contractor must provide notice and bring a claim in accordance with the process and timeline set forth in 104.03. If the City believes that there has been a significant change as defined by this Section, the City shall provide written notice to the Contractor that it is seeking an adjustment of the Contract Sum or Time, which shall be determined in accordance with 109.04.

E. Eliminated Items. Should any items contained in the Contract be found unnecessary for the proper completion of the Work, the Engineer may, upon written deductive Change Order to the Contractor, eliminate such items from the Contract, and such action shall in no way invalidate the Contract.

The pricing adjustment for any eliminated items of Work shall be determined according to 109.04.

If the Contractor disagrees with the Engineer's determination, the Contractor must provide notice and bring a Claim in accordance with the process and timeline set forth in 104.03.

F. Extra Work. The Engineer may direct the Contractor to perform Extra Work.

If the Extra Work will result in an increase in the Contract Sum or Time, the City shall have the right to require the performance thereof on a lump sum basis.

If the City elects to have the Extra Work performed on a lump sum basis, the Contractor shall submit to the Engineer a proposal for such change within ten days of the Contractor's receipt of a Request for Proposal (RFP). The Contractor's response to the City's RFP shall be itemized and segregated by labor, materials, equipment, subcontractors, supplies and appurtenances for various components of the change in the Work and shall be accompanied by signed proposals of any subcontractors that will perform any portion of the change in the Work and of any suppliers that will furnish materials or equipment for incorporation therein. Pricing of the Extra Work shall be done in accordance with 109.05.C. The proposal shall also include the Contractor's estimate of any impact to the Project's critical path as shown on the last accepted progress schedule at the time of the proposal or any non-critical path changes to the accepted progress schedule that may be required to perform the proposed change.

The Contractor, subcontractors and suppliers shall assure that the costs, pricing and schedule data submitted for evaluation with the Contractor's proposal are based on current, accurate and complete data supported by their books and records. If the City later determines that any cost or time negotiated in connection with the Extra Work decreased by any material amount because the data provided was incomplete, inaccurate or not current at the time of submission, then such price or time shall be reduced accordingly and the Engineer shall issue a written Change Order to reflect such action. Failure to agree on a reduction shall be subject to the Unilateral Change Order provisions of this Contract.

In the event that the Contractor fails to submit its proposal in response to the City's RFP within the designated ten day period, or in the event that the parties are unable to agree as to the reasonable cost and time to perform the change, the Engineer shall either direct the Contractor to perform the Extra Work on a Force Account Basis in accordance with 109.05.C, or shall make a determination of the reasonable cost and time to perform the Extra Work, based upon its own estimate, the Contractor's submission (if any), or a combination thereof.

Failure of the parties to reach agreement regarding the cost and time of performing the Change Order or any pending Claim shall not relieve the Contractor from performing the Extra Work promptly and expeditiously as directed by the Engineer.

The City will determine whether a time extension related to Extra Work is warranted in accordance with 108.06.

If the Contractor believes that any Work it is performing is Extra Work as defined by the Contract, the Contractor must provide notice and bring a Claim in accordance with the process and timeline set forth in 104.03.

G. Unilateral Change Orders. In the event that the City and Contractor are unable to agree as to the reasonable cost and time to perform Extra Work, the City has the authority to direct the Contractor to perform the Extra Work. The City will issue a Unilateral Change Order to the Contractor for any cost or time it determines to be due to Contractor in connection with the Extra Work performed on the Project.

The issuing of a Unilateral Change Order by the City will not preclude or limit the rights of City and Contractor to negotiate and agree to the amounts to be paid or time extension given to the Contractor.

If the Engineer issues a Unilateral Change Order directing a change for the amounts of cost and time determined by the Engineer, it shall become binding upon the Contractor unless the Contractor submits a Claim in accordance with the process and timeline set forth in 104.03. If the Contractor does not submit a timely Notice of Claim, the Contractor shall be deemed to be in agreement with the Unilateral Change Order as issued and the Contractor expressly waives its right to contest such Change Order, including the amount of cost and time provided therein.

H. Minor Changes/Clarifications to the Work. The Engineer shall have authority to issue Field Orders for minor changes or clarifications to the Work. The Contractor shall carry out such Field Orders promptly and as directed by the Engineer. Such Field Orders shall be considered incidental to the Work.

104.03 Contractor Notification, Continuation of Work, and Claims.

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A. General. The Contractor shall provide timely notice and complete the Claim resolution process as provided in this Section as a condition precedent to filing an action in the Franklin County Court of Common Pleas seeking additional compensation or time. The Contractor's failure to provide timely notice or meet any of the timeframes set forth below, or to request and receive written agreement from the City for an extension of such timeframes, shall terminate further review of the Claim and shall be deemed to be a waiver and release of the Contractor's right to pursue the Claim. Without limiting the generality of the foregoing, the City will not make the adjustments allowed by 104.02.B through 104.02.F if the Contractor did not give notice as specified in this Section; provided, further, no Claim may be made after final payment under this Contract.

In addition to any specific notice requirements set forth elsewhere in the Contract, if the Contractor believes that any event or circumstance or action or inaction of the City gives the Contractor the right to additional compensation or time, it shall provide timely notice and complete the Claim resolution process as provided in this Section.

B. Notice

1. Initial Oral Notification. The Contractor shall provide immediate oral notification to the Engineer upon discovering an event or circumstance that may require a modification to the Contract Documents or may result in a claim for additional compensation and/or time. Upon such notification, the Engineer will attempt to resolve the identified issue as quickly as possible. The Contractor is advised that oral notice must be followed up by a written notice as provided in 104.03.B.2 in order for the Contractor to preserve its right to make and pursue a Claim; if the Contractor fails to do so, it shall be a waiver and release of the Claim.

2. Written Notice. If the issue is not been resolved, the Contractor must submit Written Notice no later than five working days after the Initial Oral Notification stating that the event or circumstances may require a modification to the Contract Documents or may result in a Claim for additional compensation and/or time. The written notice shall contain:

- a. A description of the circumstance giving rise to the Claim or the potential Claim, including the time, date and location the event or circumstance was first identified.
- b. An explanation why the event or circumstance represents a change to the Contract, with reference to the pertinent sections or parts of the Contract Documents.
- c. An estimate of the revisions considered necessary to the Contract Sum or Time.
- d. An estimate of the time within which the City needs to respond to the notice in order to minimize or mitigate additional cost or delay to the Project.
- e. As to any Claim on which the Contractor has provided written notice, it shall from the date of the written notice keep books and records of labor, equipment and materials detailing any costs or delays associated with such claim or the circumstances giving rise to the claim or

potential claim. The keeping of such books and records shall be done in accordance with 109.05.C.8 and the Contractor acknowledges and agrees that the City's participation in this recordkeeping process and acceptance of those records is solely for recording costs incurred and not an acknowledgment of the merit, if any, of a Claim for additional compensation or time, which shall be determined in accordance with the process set forth in this Section. Because of its preliminary nature, the City will require only the Contractor's best estimate based on available information at the time of first written notice; provided, however, the Contractor shall keep the Engineer regularly informed in writing of any on-going cost or time issues and shall, within thirty days after the end of the Claim event or circumstances, supplement its prior submissions identified as its final cost and time information, as applicable.

C. Continuation of Work. The Contractor shall continue with all Work, including the Work that is the subject of a Claim or potential Claim, unless specifically directed otherwise by the Engineer. The City shall continue to pay Contractor for all non-disputed work performed during the pendency of any Claim.

D. Claims. Claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers if and to the extent the Contractor is entitled to relief under the Contract. Any Claims brought by the Contractor, on behalf of itself or any subcontractor or supplier, shall be subject to all requirements of this Section.

The Contractor shall provide with each Claim a Certification of Claim that:

1. The Claim is made in good faith and is fully documented and supported in accordance with the terms of the Contract.
2. The supporting data is accurate and complete to the best of the Contractor's knowledge and belief after appropriate inquiry and review.
3. The Claim amount or time requested accurately reflects the Contractor's actual incurred costs or additional time, or its best estimate of costs or additional time to be incurred if it is not known at the time the Claim is made. (In the event an estimate is provided initially, the Contractor will be required to re-certify, as provided herein, the accuracy of the Claim when the final costs and time are presented to the City.)
4. Acknowledgement by the signatory that the Certification is signed under penalty of law for perjury or falsification with specific reference to the City's False Claim provision in Section 335.05 of City Code.

E. Dispute Resolution Process

1. Step 1 (On-Site Determination). Within five calendar days of receipt of the Contractor's Written Notice, the Engineer will meet with the Contractor's representative(s) to review all pertinent information and contract provisions and negotiate in an effort to reach a resolution in accordance with the Contract Documents. Within fourteen calendar days of the Step 1 meeting, the Engineer will issue a written Step 1 decision describing the decision and reasoning for it. If the dispute is not

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resolved at Step 1, the Contractor must either abandon the Claim or continue pursuing the Claim by proceeding to Step 2 within the required timeframe.

These time frames may be extended by the Engineer, in writing, as needed for the Contractor to provide merit, cost and time information regarding the dispute, as requested by the Engineer.

2. Step 2 (Claim Resolution Committee). Within seven calendar days of receipt of the Step 1 decision, the Contractor must submit a written request for a Step 2 meeting to the Director. The Director will promptly establish within the applicable City Department, and Division if applicable, a Claim Resolution Committee (CRC). Within fourteen calendar days after the Director's receipt of the Contractor's request for a Step 2 meeting, the Contractor shall submit (or supplement) documentation that describes the Claim, the monetary amount or time extension sought, the basis for Contractor's Claim under the Contract Documents, and copies of any applicable parts of the Contract Documents and project records, all in accordance with 104.03.B.2.

Within fourteen calendar days after receipt of the Contractor's documentation, the Engineer will send to the Contractor and the CRC his/her written response. Within fourteen calendar days after receipt of all documentation, the CRC will meet with Contractor and the Engineer (or designee) to discuss the Claim.

If the Claim is not resolved at the meeting, within fourteen calendar days after the meeting, the Director will issue to Contractor a written decision.

The time periods under this Section may be revised by written approval of the Director.

3. Alternative Dispute Resolution (ADR). If the Contractor does not accept the Director's Step 2 decision, within fourteen calendar days of its receipt of the Step 2 decision, the Contractor may submit to the Director a written Notice of Intent to Pursue a Claim.

The Contractor's Notice of Intent to Pursue Claim shall advise the Director whether the Contractor wishes to resolve the Claim using either mediation or arbitration.

If the Contractor proposes mediation, within thirty calendar days after receipt of Contractor's Notice of Intent to Pursue Claim, the Director shall advise the Contractor in writing whether the City accepts the Contractor's proposal.

If the Contractor proposes arbitration, it shall be subject to approval of the City Council or such other conditions that are necessary to comply with City Code. Within thirty calendar days after either the City Council acts on the matter or the Contractor advises the Director that it will accept any conditions that are necessary to comply with City Code, the Director shall advise the Contractor in writing whether the City accepts the Contractor's proposal to arbitrate.

If the City accepts using mediation or arbitration, the parties will use the then applicable International Institute for Conflict Prevention and Resolution Mediation Procedure or the International Institute for Conflict Prevention and Resolution Rules for Expedited Arbitration of Construction Disputes, as applicable. The parties will enter into such further agreement as is necessary to implement the ADR process selected and may make modifications to such processes as they mutually agree.

4. Filing of Lawsuit in Franklin County Court of Common Pleas. If the Claim is not resolved at Step 2 and the Contractor does not elect to request ADR pursuant to 104.03.E.3 or the City declines the Contractor's request for an ADR process pursuant to 104.03.E.3, the Contractor must either abandon the Claim or file a lawsuit in the Franklin County Court of Common Pleas within one hundred twenty calendar days after receipt of the Director's Step 2 decision. The Contractor's failure to file a lawsuit within that time period shall be deemed a waiver and release of the Claim against City. The time period to file a lawsuit may be extended by mutual written agreement of the City and the Contractor.

104.04 Maintenance of Traffic and Accessibility to Utilities. The Contractor shall at all times provide and maintain access to fire hydrants, water valves, water service boxes, gas valves, gas service boxes, manholes and other similar appurtenances.

When so stated in the Contract Documents, maintain public traffic during construction, including cross traffic at intersections. Maintenance of traffic may be required only at certain stages of construction or at all times, if so noted.

At locations on the Project where sewer or water line construction only is called for and a part of the existing pavement will remain in place, maintain traffic and provide ingress and egress to all public and private entrances.

In the event of the complete closure of any street, alley or private drive, the Contractor shall give written notification to the occupants of all premises affected by such closure as per 614.05.

Whenever the Contractor, for any reason, ceases operations on this Contract for a period of fourteen or more calendar days, the Contractor, if so directed by the Engineer, shall construct a temporary roadway to provide access to any premises affected by Project operations. The temporary roadway shall be constructed of cinders, gravel, crushed stone or other acceptable materials and of suitable width and thickness to carry anticipated vehicles, as directed by the Engineer. The Contractor shall maintain the temporary road in serviceable condition until such time that the Work is resumed. The Contractor shall bear the cost of constructing and maintaining any temporary roadway.

Failure of the Contractor to perform the operations stated in this Section when directed by the Engineer, within the timeframe provided by the Engineer, will give the City authority to perform the work and back charge such cost to the Contractor.

The Contractor shall furnish, erect, maintain and remove all traffic control devices in accordance with the OMUTCD. All traffic control devices shall be paid for in accordance with the provisions of Section 614 - Maintaining Traffic. When the Contract Documents do not include Section 614, the cost of this work shall be included in the price bid for various items in the Proposal. The provision of these items and this Section shall not in any way relieve the Contractor of any of its legal responsibilities or liabilities for the safety of the public. The attention of the Contractor is also directed to the provisions of 107.02 and 107.07 of the Specifications.

104.05 Right In and Use of Materials Found on the Work Site. If the Contractor proposes that existing raw or recycled Materials Found on the Work Site are compliant with the specifications for the Work, Contractor may submit an add/deduct cost proposal to the Engineer for consideration. Contractor shall also indicate if there are also add/deduct time adjustments to the contract completion time associated with the use of

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these materials. All portions of suitable or unsuitable excavation material removed, which was needed for use in the embankments, backfills, approaches, or otherwise, shall be replaced with other acceptable material, at the expense of the Contractor. Excavate or remove material only from within the grading limits, as indicated by the slope and grade lines.

104.06 Right of Property in Materials. All materials attached, fixed or incorporated into the Work or the soil shall thereupon become property of the City and the Contractor shall have no property rights thereto.

104.07 Final Cleaning Up. Before Final Acceptance, remove all rubbish, layout stakes, monitoring wells, settlement instrumentation devices, sediment control devices as directed by the Engineer, excess material, temporary structures, and equipment, including stream channels and banks within the Right-of-Way at drainage structures, and all borrow and waste areas, storage sites, temporary plant sites, haul roads, and other property occupied by the Contractor in connection with the Work. Establish suitable vegetative cover in these areas by seeding and mulching or sodding according to Items 659 or 660, except for cultivated fields. Leave the Project site in an acceptable condition as determined by the Engineer. Unless a separate bid item is provided in the Proposal, the cost of cleanup is incidental to all Contract Items.

104.08 Recordkeeping/Audit. The Contractor, subcontractor(s) and supplier(s) shall cooperate with the City and shall produce, compile, maintain and keep all cost, time and schedule records sufficient to substantiate all requests for payment, Claims for additional compensation, and requests for time extensions. The Contractor shall keep the following records, including, but not limited to, daily time sheets and foreperson's daily reports, union agreements if any, payroll register, earnings records, payroll tax returns, material invoices, purchase orders, cancelled checks, equipment records, vendor rental agreements, subcontractor payment certificates, job cost report, general ledgers and subsidiary ledgers, cash disbursement journals, complete bid estimate and worksheets, financial statements, worksheets used to prepare the Claim and establish cost components for Claim items, and schedule information and updates.

Upon reasonable written notice to the Contractor, the City or its designated agents shall be provided access to, and the right to inspect and audit, all of the Contractor's and its subcontractors' and suppliers' records pertaining to the Project. If and to the extent that the Contractor fails to maintain and keep proper Project records, fails to provide the City or its designated agents access to such Project records, or fails to provide the documentation required by 108 or 109, the City may deny any requests for payment, additional compensation, and/or requests for time extensions if and to the extent they have not been or cannot be substantiated by the Contractor or by inspection/audit of the City.